

Chapter One: Overview of the Investigative Process

History and Creation of the Civilian Complaint Review Board

In 1953, the New York City Police Department established the Civilian Complaint Review Board (“CCRB”) to investigate civilian complaints against New York City police officers. Forty years later, in 1993, the board became an all-civilian agency independent of the New York City Police Department.

The original review board consisted of three deputy police commissioners who were charged with the responsibility of reviewing investigative reports prepared by police department staff; the board then reported its findings and recommendations directly to the police commissioner. From 1955 to 1965 only minor administrative changes were made to the board’s operation. One deputy commissioner was appointed to chair the board, and the board’s offices were moved from a recognized police facility to a more neutral site. This was done to put complainants and civilian witnesses more at ease when making complaints and giving testimony.

In 1966, Mayor John Lindsay sought to alter the board’s structure when he appointed four private citizens to the board. This triggered strong opposition from the Patrolmen’s Benevolent Association, which called for an electoral referendum to abolish the “mixed” board. In November 1966, the voters approved the referendum eliminating the “mixed” board. As a result, the board was once again comprised solely of police executives (non-uniformed members of the department) appointed by the police commissioner. Its investigative staff, which was responsible for conducting the investigations of civilian complaints, was composed of New York City police officers. Subject only to an increase in the number of police department executives serving on the board, the board’s organizational structure did not change until 1987.

In that year, during the term of Mayor Edward Koch and in accordance with legislation passed in 1986 by the New York City Council, the board was again restructured as a mixed board on which both private citizens and non-uniformed police executives served. The 1986 law changed the number of Civilian Complaint Review Board members to twelve, one of whom served as the chair. The mayor, with the advice and consent of the city council, appointed six members who were private citizens, one from each borough and one at large. From his non-uniformed executive staff, the police commissioner selected and appointed the other six members. By statute, the board members’ terms were limited to two years and the mayoral designees were compensated on a per diem basis for their service. In 1987, the board’s investigative unit, known as the Civilian Complaint Investigative Bureau, also began hiring a limited number of civilian investigators to complement its staff of police officer investigators. The board, however, remained a unit within the police department.

Following a well-publicized political debate, in January 1993 under Mayor David Dinkins, the city council modified the city charter to create the first police oversight agency in New York City that was independent of the police department. Since that time, the CCRB’s members and staff have been comprised entirely of private citizens. On July 5, 1993, the independent CCRB became a functioning agency, and the first meeting of the new board was held the following month. Pursuant to the 1993 legislation, the board subsequently promulgated rules governing the procedure by which complaints can be filed, the investigative process, board review of investigations, and other matters. The 1993 legislation amending the city charter and the published rules of the CCRB can be found in the appendix to this chapter.

The mission and purpose of the CCRB are addressed in its enabling statute:

It is in the interest of the people of the city of New York and the New York City [P]olice [D]epartment that the investigation of complaints concerning misconduct by officers of the department towards members of the public be made complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct.ⁱ

BOARD'S STRUCTURE AND RESPONSIBILITIES

The CCRB consists of a board of thirteen members of the public as well as a civilian staff that is necessary for the board to exercise its powers and fulfill its duties.

The mayor appoints all thirteen members of the board, who must be residents of New York City and “shall reflect the diversity of the city’s population.”ⁱⁱⁱ The city council designates (or nominates) five members of the board, one from each of the city’s five boroughs; the police commissioner designates (or nominates) three members of the board who must have experience as law enforcement professionals; and the mayor designates the remaining five board members, including the chair. Aside from the three members designated by the police commissioner, no other member may have prior law enforcement experience or be former employees of the New York City Police Department. (Under the city charter, experience as an attorney in a prosecutorial agency does not constitute experience as a law enforcement professional.) No members of the board, who serve for overlapping three-year terms,ⁱⁱⁱ shall hold any other public office or employment. All board members are eligible for compensation for their work on a per diem basis. The board hires the executive director, who in turn hires and supervises the agency’s staff.

Under the 1993 legislation, the board has the power to:

receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.

The findings and recommendations of the board, and the basis therefore, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.^{iv}

As is necessary for the investigation of complaints, the city charter gives the board the power to compel the attendance of witnesses and require the production of such records and other materials through the issuance of subpoenas.^v The legislation mandates that the police department cooperate with the CCRB by providing assistance as is reasonably requested, furnishing the CCRB with records and other materials to the extent permitted by law, ensuring that police department officers and employees appear before and respond to inquiries of the board and its civilian investigators, and reporting to the board on all cases the board substantiates.^{vi}

The 1993 legislation also requires the board to do the following:

1. “establish a mediation program to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation;”^{vii}
2. “issue to the mayor and the city council a semi-annual report which shall describe its activities and summarize its actions;”^{viii} and
3. “inform the public about the board and its duties ... and ... develop and administer an on-going program for the education of the public regarding” the board.”^{ix}

Receipt and Initial Processing of Complaints

HOW THE CCRB RECEIVES COMPLAINTS

The CCRB receives complaints from civilians who file complaints with the CCRB, the police department, and other governmental agencies. Any civilian can file a complaint with the CCRB; however, if a case is filed by a civilian who did not witness the incident and is not a guardian to a victim in the complaint [note: as of February 1, 2018, this type of civilian is referred to as a Reporter Non-Witness], the Director of Intake will alert the Executive Director, Chiefs of Investigations, and the Deputy Chief of Investigations regarding the relevant facts of the case. The Executive Director, or his designee, will determine whether the case will be investigated. In some instances, the CCRB will generate a case for which the CCRB has not received a complaint. These cases should be flagged for the Director of Intake to review and forward the facts to the Executive Director, Chiefs of Investigations, and the Deputy Chief of Investigations. The Reporter Non-Witness in such cases shall be listed as the CCRB.

Civilians can file complaints directly with the CCRB in four ways. First, civilians can make a complaint in-person at CCRB’s office. The CCRB receives “walk-in” complaints Monday through Friday from approximately 8:00 a.m. to 5:00 p.m. When a civilian comes to the CCRB to file a CCRB complaint, the complainant¹ fills out a walk-in form and is interviewed by an investigator from the squad on intake duty.

Civilians can make a complaint by telephone by calling 311 (or from outside New York City 1-212-639-9675). The staff at 311 will transfer callers to the CCRB. From approximately 8:00 a.m. to 5:00 p.m. Monday through Friday, the Intake Unit fields these telephone calls and inputs complaints into the CTS. During times that the investigators are not available to answer telephone calls, the calls are forwarded to the agency’s automated answering system, which prompts callers to provide basic complaint information. The investigators and/or administrative staff members subsequently listen to these recorded calls and enter into the CTS the appropriate complaint information.

Complaints can also be filed with the CCRB through written correspondence. As part of the agency’s ongoing community outreach efforts, the CCRB distributes postage paid complaint forms. The complainant can either use the postage paid complaint forms or simply write a letter and send it to the CCRB. Lastly, complaints can be filed online through the CCRB’s website at www.nyc.gov/ccrb.

¹ For the purposes of the investigative manual, the term “complainant” will be used to refer to reporter non-witnesses, complainant/victims, and complainant/witnesses.

Many civilians file their complaints about police personnel directly at any precinct stationhouse. Under Patrol Guide procedure 207-31, if the civilian is willing to be interviewed, the recording officer is required to interview the civilian and prepare a civilian complaint report, a police department form. The receiving command is then required to telephone the CCRB to notify the CCRB about the new complaint. The department subsequently forwards the civilian complaint reports to the CCRB and, under Patrol Guide procedure 207-31, is supposed to record on these reports any preliminary inquiry regarding the subject officer's identity and attach to the reports relevant precinct records.

Aside from police precincts, the CCRB receives referrals from a variety of police sources, most frequently from the Internal Affairs Bureau (IAB). As with the CCRB, civilians or police personnel can file a complaint by telephone with the IAB command center; IAB records the majority of these telephone complaints. Civilians who call 911 about a police officer's conduct are usually referred directly by the operator to the Internal Affairs Bureau command center. Additionally, IAB receives reports of incidents or complaints that the reporting police command deems criminal, serious, or falling outside the CCRB's jurisdiction. Ultimately, IAB commanders review the complaints IAB receives and determine whether referral to the CCRB is appropriate. Complaints received by IAB but falling within the CCRB's jurisdiction are forwarded to the CCRB in the form of an IAB log. An IAB log is similar to the CCRB's "245," or complaint report, and contains basic information about the complaint.

In some cases, IAB will have conducted a preliminary investigation (referred to by IAB as a "call-out"). In those instances, investigators will have to request the call-out materials from IAB. In cases involving both an allegation that falls within the CCRB's jurisdiction and an allegation of criminal conduct (e.g., corruption or major force), IAB may complete a full investigation and then forward the completed case file to CCRB, upon request.

The CCRB also has various rotating locations in the community where civilians can file complaints or be interviewed in-person. These locations, known as "off-site" locations, are generally housed in city council members' offices and can change based on availability. When these offices are available, the Intake Unit will schedule civilians at these locations for in-person interviews. [REDACTED]

[REDACTED]

The CCRB also receives complaints that civilians initially filed with other governmental entities like members of the New York City Council, district attorneys, the Mayor's Office, the Public Advocate's Office, and members of the United States Congress.

THE PROCESSING OF COMPLAINTS

Though the CCRB receives complaints in a variety of ways, all complaints, whether filed directly with the CCRB or referred from other sources, are initially processed by staff, including investigators. When a complaint is received, the Intake Unit enters basic complaint information into the CCRB's Complaint Tracking System(CTS) including: time, date, and location of occurrence; complainant, victim, and witnesses' names and contact information; names, shield numbers, and other identifying information of officers involved, if available; and a brief narrative of the incident describing what took place. The Intake Unit also makes an initial determination about whether the complaint falls within the agency's jurisdiction by characterizing the complaint type on the CTS complaint screen. Regardless of whether the complaint is characterized as a CCRB complaint, every complaint entered into the CTS automatically generates a unique case number (which relates to the order in which the complaint was entered into the CTS).

DUTIES OF THE INTAKE UNIT

The Intake Unit is responsible for inputting all complaints received at the CCRB, except walk-in complaints. The Intake Unit attempts to schedule civilian interviews filed over the telephone with the CCRB except in sensitive cases or when the complainant or victim is incarcerated, in the hospital, lives out of state, or is otherwise unable to be interviewed at the CCRB; when interviews are scheduled, they input the information into the scheduling calendar.

[REDACTED]

ASSIGNMENT OF COMPLAINTS TO SQUADS

All complaints, with the exception of walk-in complaints and sensitive cases, are initially processed by the Intake Unit and assigned to squads [REDACTED]

[REDACTED]

If a complaint is filed by phone, the Intake Unit attempts to schedule an interview with the complainant/victim/witness. [REDACTED]

[REDACTED]

Additionally, sensitive cases are assigned to squads based on a separate sensitive case queue, to assure even distribution.

CCRB Policies Governing the Treatment of Complaints

REVIEW OF THE ACCURACY OF COMPLAINT INFORMATION ENTERED INTO THE CTS

When inputting the complaint into the CTS, the investigator must always take great care to thoroughly and accurately enter all complaint information into the CTS. Whether a member of the Intake Unit or a

squad, the investigator is expected to correctly spell names and locations and write sentences that are grammatically correct and in incident chronological order. When information is not clear, the investigator should not hazard guesses or make assumptions. Instead, bring the issue to your supervisor's attention.

It is imperative that the assigned investigator reviews the source of the complaint, e.g., the recorded telephone call, the complainant's letter, or the IAB log, and compare that to the information the Intake Unit entered into the CTS. The investigator should never rely solely upon the information the Intake Unit entered into the CTS. For example, investigators will not be able to correctly determine whether the complaint falls within the CCRB's jurisdiction if it relies upon erroneous complaint information in the CTS. Upon reviewing the material that forms the basis of the complaint, the investigator should correct any erroneous information entered into the CTS, add information that should have been entered into the CTS, and correct the narrative as is appropriate (this should be done only at the outset of an investigation). The narrative should reflect the information provided when the complaint was originally filed rather than what the complainant/victim subsequently relates to the CCRB.

Unfortunately, the narrative section of the IAB log is often written with numerous abbreviations, misspellings, grammatical errors, and identifications based on the civilians' and/or officers' roles in the incident, as opposed to their proper names. Investigators should correct the narrative section within the CTS to amend the above-mentioned issues. However, the investigator should not add, subtract from, or otherwise alter the substantive narrative information obtained from the IAB log. One exception would be if the IAB Command Center intake recordings (subsequently obtained by the investigator following a records request) provided information that was inconsistent with, or missing from, the IAB log narrative. In such a situation, the investigator should consult with their supervisor before substantively altering the narrative in the CTS.

Similarly, when a complaint is made by letter, e-mail, fax, or is referred to the CCRB from another agency, it is imperative that the investigator inputting the complaint into the CTS accurately represents the substance of the complaint in chronological form in the narrative section. The narrative should not be a carbon copy of the letter, e-mail, fax, etc.

Should anyone want to examine the complainant's original complaint, it will be available in the case file.

The integrity of the statistical data the CCRB publishes monthly and semi-annually depends on the quality of the information entered into the CTS. This data is derived not just from closed cases but from all cases, including new complaints and complaints that do not fall within the CCRB's jurisdiction. Contact letters that investigators utilize also incorporate information entered into the CTS. The addresses of all witnesses and the date, time and location of the incident, for example, are referenced in contact letters generated by the CTS. It is therefore imperative that all investigators ensure that the following are filled out correctly: all complaint screen fields, all pedigree (e.g., race, sex, and age) and contact information for the complainants, victims, and witnesses, and all appropriate fields in the officers' screen.

With respect to the officers' screen, even if the subject officer is not identified by name, shield or tax number, evidence may show that the officer was assigned to a certain command. In such a case, the complaint should be attributed to that command. Moreover, the command to which the complaint is attributed must reflect the subject officer's command at the time of the incident. Within the

officers' screen, the Intake Unit must also accurately describe and ascribe all known allegations.

Whenever taking contact information from a civilian, the investigator must ask for the civilian's mobile/cell phone number. If the civilian has a mobile/cell phone number, the investigator must ask for the civilian's permission to contact them by SMS text message, while also informing the civilian that standard text messaging rates apply. SMS text messaging will only be used for contact purposes (interview reminders; please call; missed appointment; etc.) and the investigator is not permitted to send confidential or substantive case information via text message.

CHECK TO SEE IF THE NEW COMPLAINT IS DUPLICATIVE OF A PREVIOUS COMPLAINT

To ensure consistency and avoid duplicative investigations, the intake supervisors and/or investigators, as well as the squad investigators, must determine using the CTS whether the new complaint is duplicative of a previously filed complaint. To search for duplicates within the CTS, the investigator should, under "task" and "open complaints," conduct queries based upon the complainant's and victim's names and the date of the incident. The investigator should also conduct queries based on: the precinct of occurrence and date of incident; complainant's and victim's telephone numbers; and the location of incident. The investigator should use the % sign to conduct the above-mentioned queries with partial information. Under "tools" and "officer identification," the investigator should conduct queries based upon the officer(s) named in the new complaint. This should be done by the Intake Unit, as well as by the squad that is assigned the new complaint.

If it is determined that the new complaint is a duplicate of a previously filed complaint, the supervisor should first assess whether the most recent complaint includes new information that changes, for example, the jurisdictional decision made for the previous complaint. Assuming the jurisdictional issue is decided, the supervisor should close the case within the CTS as a duplicate. In a CTS memorandum, the supervisor should explain which case the current case duplicates; the supervisor should also insure that any new documentation is given to the investigator currently investigating the case or, if the first case has been closed, is given to the Case Management Unit ("CMU") so that all pertinent documentation is placed into the original case file. The supervisor should note on the case file jacket that the case is a duplicate of another case and specify which case the current case duplicates.

If it is discovered only later in the investigative process that the case is a duplicate of another case still under investigation, the case in which the most investigative work has been performed will remain open and the squad with that case will continue the investigation; the case in which the least investigative work has been performed will be closed. Investigator re-assignment letters will be sent by the investigator with the open case.

JURISDICTIONAL DECISION

The Intake Unit must determine whether the CCRB has jurisdiction to investigate the complaint, which is governed by the City Charter and CCRB rule § 1-13. The CCRB has jurisdiction only to investigate complaints filed against officers of the New York City Police Department that involve certain types of conduct. Thus, the decision about whether the CCRB has jurisdiction over a com-

plaint is a two-step inquiry.

At the beginning stages of the investigation, it is not always clear whether the complaint falls within the CCRB's jurisdiction. If and when it is discovered that the CCRB does not have jurisdiction over the complaint, the investigator should immediately bring the case to the attention of his/her supervisor. Supervisors will review the case and make the appropriate referral.

To refer a complaint to another agency, a supervisor must review the case and conclude that the complaint falls outside the CCRB's jurisdiction. The supervisor must document that jurisdictional decision in an investigative action ("IA") in the CTS explaining the rationale for the referral. The case will then be sent to the Intake Docket for a second Jurisdictional Decision IA before being referred.

At times, the CCRB may receive complaints that fall partially within the jurisdiction of the CCRB and partially within the jurisdiction of another agency or the NYPD. Often these cases will only require that a "spin-off" case be referred to the external agency with jurisdiction. In some cases, the case may be better served by referring the entirety of the investigation to another agency. For example, if a case involves corruption and money laundering by members of service, and during the operation, a civilian complains that the officer's used discourteous language and no other FADO, it may be more beneficial for IAB to investigate the entire investigation. In such instances, the squad leader should confer with the Deputy Chief of Investigations or the Director of Quality Assurance and Improvement and pending the result of that conversation, draft a memo to the Executive Director, Ccing the Chiefs of Investigations, and the Deputy Chief of Investigations, outlining the rationale. The Executive Director, in consultation with the Board Chair, will determine whether the case should be referred in its entirety.

Officers of the New York City Police Department

Under the City Charter, the CCRB is authorized to investigate complaints "concerning misconduct by officers of the [New York City Police] [D]epartment."^x This means that the board's jurisdiction extends to officers of all ranks who are members of the New York City Police Department. The CCRB does not have jurisdiction to investigate complaints made against members of other law enforcement agencies that operate within the confines of New York City. The CCRB also lacks jurisdiction to investigate complaints made against civilian employees of the NYPD, e.g., traffic enforcement agents, school safety agents, and principal administrative aides (PPAs).

With respect to complaints made against employees of other law enforcement agencies, the following procedures should be followed. If the other agency is identified while the civilian is on the phone, then the investigator should *not* enter the complaint into the CTS; the investigator should refer the civilian to 311 to determine the correct agency to which the case belongs. In the event that the complaint has already been input into the CTS by the time it reaches the investigator, then the investigator should refer the complaint to the appropriate law enforcement agency. Within the CTS, a supervisor should forward the complaint to the Case Management Unit for referral and in a CTS memorandum indicate where the complaint should be referred. If possible, the supervisor should provide the Case Management Unit with an address to where the referral should be sent. If there are additional case materials that need to be forwarded, the supervisor should give the case file to the Case Management Unit so that copies of the case file can be forwarded.

With respect to civilian employees of the New York City Police Department, as discussed below, the nature of the complaint will dictate to what unit the CCRB will refer the case. Allegations of corruption or criminal conduct made against civilian employees of the department will be referred to IAB; other allegations will be referred to the Office of the Chief of Department.

Force, abuse of authority, discourtesy, and offensive language

As delineated in the city charter, the CCRB is authorized to investigate and review complaints of police misconduct involving the excessive use of force, abuse of authority, discourtesy, or offensive language. The CCRB commonly uses the acronym FADO to describe its subject matter jurisdiction. The scope of FADO allegations can be understood most easily by referencing the chapter on drafting allegations. In short, force allegations can range from the firing of a gun to pulling, grabbing or hitting a civilian. The scope of abuse of authority is the hardest to define since almost any act of misconduct could be described as an abuse of the officer's authority. However, upon becoming independent of the police department, the CCRB generally retained the abuse of authority allegation categories that the police department's board used prior to 1993. Abuse of authority covers a wide array of conduct including improper searches and seizures, threats, refusals to process civilian complaints and improper arrests. Discourtesy refers to inappropriate behavioral or verbal conduct by the subject officer, including rude or obscene gestures, actions, or use of profanity. Offensive language can refer to slurs, derogatory remarks, and/or gestures based upon a person's race, ethnicity, religion, gender, sexual orientation or physical disability.

REFERRALS TO THE NYPD

With respect to complaints made against New York City Police Department officers that do not fall within the CCRB's FADO jurisdiction, the CCRB generally refers these complaints to one of two police department units: IAB and the Office of the Chief of Department ("OCD"). In cases where FADO misconduct, in addition to other types of misconduct, is alleged, as discussed below, the CCRB may refer the entire complaint or simply notify either IAB or OCD of the existence of the complaint.

Referrals to the Internal Affairs Bureau

It is essential that the CCRB immediately refer appropriate cases or allegations to IAB or notify IAB regarding the existence of certain CCRB complaints. IAB investigates allegations of potentially criminal conduct by NYPD officers or civilian employees of the department; it is in a position to quickly seize officers' firearms or suspend officers and other NYPD employees. IAB also has the ability to conduct sting operations against officers and employees it suspects of corruption.

Allegations that typically fall within IAB's exclusive jurisdiction involve corruption, allegations of harassment, perjury, and off-duty criminal conduct, e.g., robbery, murder, and assaults, including all domestic violence complaints. Corruption allegations include but are not limited to: the theft of money or property, the theft, sale, use or possession of narcotics, and extortion. The CCRB must notify IAB regarding complaints involving off-duty conduct when the subject officer(s) was allegedly under the influence of alcohol. IAB should always be made aware of any and all allegations involving an off-duty officer. If any of the above circumstances arise, the investigator should seek further guidance from their supervisor.

In cases in which the only allegation(s) being made falls within IAB's jurisdiction, the CCRB will refer the entire complaint to IAB. If the entire case is to be referred to IAB, the Intake Unit must designate the case type as IAB within the CTS complaint screen. One member of supervision must review the case and indicate in an investigative action the reason(s) for the referral. If only one or more allegations are being referred (commonly referred to as a "spin-off" complaint), this should be contemporaneously noted [REDACTED]. The investigator must also note in the complaint narrative section [REDACTED] that the CCRB is retaining all

FADO allegations related to the incident; the investigator must also note the original CCRB complaint number.

Allegations of retaliation for filing CCRB complaints will be referred to IAB.

Referrals to the Office of the Chief of Department

Complaints appropriate for referral to the Office of the Chief of Department (hereinafter referred to as OCD) cover a broad range of behavior and incidents. Generally, when a complaint against a New York City police officer or employee does not contain FADO allegations and does not fall within IAB's purview, the CCRB refers the case to OCD. In the absence of allegations of criminal conduct, most complaints against civilian employees of the police department will also be referred to OCD. OCD is connected to the CTS and can view information pertaining to those complaints characterized as referrals to OCD. OCD assesses complaints, refers complaints to the appropriate unit for investigation or investigates complaints itself.

Complaints that allege that an officer failed to make an arrest or issue a summons, failed to take appropriate action, or improperly prepared reports will be referred to OCD. In general, when a civilian complains that he/she was not guilty of the offense or crime for which he/she was summonsed or arrested, that complaint will also be referred to OCD. The type of complaints that should be referred to OCD is best illustrated by the following examples:

1. An individual called 911 because her neighbor refused to turn down her music. The police did not respond for over an hour. When they did respond, the officers did not take a report about the incident.
2. An individual claims that the detective assigned to his robbery complaint is not handling his case properly.
3. An individual was issued a ticket for parking in a fire zone; he claims that his car was not parked in the fire zone.
4. An individual states that a double-parked car was obstructing traffic on her street. When she notified an officer on patrol, the officer failed to take action to resolve the problem.

Generally, the CCRB chooses not to exercise its jurisdiction over such allegations because:

1) prosecutors and courts ultimately decide the validity of the charges; and 2) it is unrealistic to expect the CCRB to handle all these complaints. While such complaints are usually referred to OCD, if the complainant/victim claims that the police lied in arresting him/her, the CCRB generally refers the case to the Internal Affairs Bureau. The CCRB, however, always retains its right to investigate an arrest or summons as an abuse of authority. When there are facts from which it may be concluded that an arrest was made or a summons issued in retaliation for some act committed by the complainant/victim (e.g., the use of an obscenity, a challenge to the officer's authority, a request to obtain the officer's name or shield number, or a threat to file a complaint), the board will investigate and plead this as an allegation.

In cases in which the only allegation(s) being made fall within the jurisdiction of OCD, the CCRB will refer the entire complaint to OCD. In many cases, however, the complaint includes both FADO

allegations and allegations falling within OCD's jurisdiction. Again, though it is difficult to utilize bright-line rules, if the primary allegations are FADO allegations, the CCRB will retain the complaint. If the real gist of the complaint consists of OCD allegations, the CCRB will refer the entire complaint to the OCD. If the complaint includes both serious FADO and OCD allegations, the CCRB will retain the complaint but also refer the appropriate allegations to OCD.

[REDACTED]

[REDACTED]

[REDACTED] Any time a case that was received from IAB is being referred to OCD or IAB, a note should be made in the [REDACTED] narrative informing IAB that this case was received from IAB, but that the case falls within their jurisdiction.

COMPLAINTS FILED BY NYPD EMPLOYEES AGAINST NYPD OFFICERS

Off-duty NYPD civilian employees and off-duty officers sometimes interact with on-duty NYPD officers who are acting in their law enforcement capacity. These interactions may result in FADO complaints being filed against the on-duty officer(s). In such cases, the CCRB will generally investigate the complaint. However, at the request of the police department, the CCRB must notify IAB about the complaint. In notifying IAB about a complaint that the CCRB also intends to investigate, the Intake Unit or squad should follow the procedures outlined in the previous section.

If an on-duty NYPD civilian employee or an on-duty officer files a complaint against an NYPD officer, the complaint should be referred in its entirety to IAB.

COMPLAINTS FILED AGAINST OFFICERS FOR OFF-DUTY CONDUCT

Complaints filed against officers for off-duty conduct, even if the conduct consists of that which would be considered FADO conduct if the officer was on-duty, are not automatically investigated by the CCRB. The standard by which the agency decides to investigate off-duty conduct is whether the off-duty officer invoked explicitly or implicitly his/her authority as a police officer. For example, an off-duty officer who, during a traffic dispute, tells the civilian he is a police officer, curses at the civilian, and threatens the civilian, is likely to be investigated by the CCRB. On the other hand, when an off-duty officer curses at her neighbor because the neighbor's dog ran onto the officer's property, the case is likely to be one the CCRB will refer to the IAB.

Use by the off-duty officer of his/her gun, (that he/she has the privilege to possess because of

his/her status as a police officer), will in most cases be sufficient to justify a CCRB investigation. Typically, this kind of case involves revealing or wielding the gun to gain an advantage during a dispute. Serious crimes the off-duty officer may have perpetrated with a gun, like murders, assaults, or robberies, should be referred immediately to IAB.

[REDACTED]

[REDACTED]

[REDACTED]

COMPLAINTS FILED AFTER THE STATUTE OF LIMITATIONS OR MORE THAN ONE YEAR AFTER THE DATE OF INCIDENT

From time to time, the CCRB will receive FADO complaints almost 18 months or even more than 18 months after the date of the incident. Yet New York State law limits the amount of time available to serve charges of misconduct against an officer. Under New York State Civil Service Law § 75(4):

Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges ... provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.^{xi}

The import of the statute is that officers who are subjects of CCRB investigations must be served with disciplinary charges within 18 months of the date of occurrence. If the officer is not served within the required time, the officer cannot be disciplined. The only exception to the statute is when the officer committed conduct that, if proven, constitutes a misdemeanor or a felony, i.e., a crime.^{xii} The CCRB cases in which the exception to the statute of limitations could most frequently be invoked are force cases where the officer arguably committed an assault or attempted assault. Determining whether the officer committed a crime requires an examination of the facts considering the crime's elements as set forth in the penal law.

When the CCRB receives a FADO complaint that was filed with the CCRB 18 months or more after the date of the incident, the case will likely be referred to IAB and a CCRB investigation will not be conducted; this is done after consulting with the Deputy Chief of Investigations and/or the Chief of Investigations. If the case is filed 18 months or more after the date of incident and involves serious allegations that could lead to criminal prosecution of the subject officer, the supervisor of Intake or respective squad should confer with a Deputy Chief of Investigations or the Chief of Investigations prior to taking any action to ensure the investigation falls under the criminal exception rule. Additionally, if a case is filed more than one year after the date of incident, the supervisor should draft a memo to the Chiefs of Investigations, the Deputy Chief of Investigations, and the Director of Quality Assurance and Improvement and CCing the Executive Director detailing the facts of the case and recommending whether the CCRB investigate the case.

COMPLAINT MADE BY A CIVILIAN WHO IS A COMPLAINANT/VICTIM IN AN ONGOING CCRB INVESTIGATION

Some civilians file multiple complaints within the course of a short period of time, so short that an investigator on another squad is still investigating a complaint in which the same civilian is a complainant and/or victim. To ensure continuity with respect to the agency's interactions with the complainant and to encourage the most comprehensive analysis of the complainant's cases, the new complaint will be transferred to the investigator currently assigned to one or more of the complainant's cases. The exception to this guideline would be an attorney, social worker, etc., who files multiple complaints on behalf of their clients but did not witness the allegations. These cases will be treated as separate complaints and will not be assigned to one investigator.

CASES TO BE BROUGHT TO THE ATTENTION OF A PROSECUTOR'S OFFICE AND IAB

In instances where the CCRB has strong reasons to believe that officers' conduct may warrant a criminal investigation, the CCRB may elect to spin-off or refer the case to a district attorney's office. This decision will be made only [REDACTED] at the direction of the Executive Director or the Chiefs of Investigations.

Referrals and spin-offs should be generated in the Complaint Tracking System (CTS) and sent to the appropriate district attorney's office. Squad leaders must ensure that the contents of the active CCRB case relevant to the alleged conduct be reproduced by the Case Management Unit and sent to the district attorney's office with the spin-off. All cases referred to a district attorney's office should be spun-off to IAB as well.

INVESTIGATIONS SUSPENDED AT THE REQUEST OF A CRIMINAL PROSECUTOR

It is often in the interest of prosecutors to request that the CCRB stop investigating a complaint until such time that the prosecutors have completed their investigation or criminal prosecution of either civilians or police officers. When a prosecutor is investigating or prosecuting a civilian, the prosecutor wants to avoid having civilian and police witnesses make statements to the CCRB that could be used to impeach the witnesses at trial. Furthermore, when a police officer is being investigated or prosecuted, the prosecutor does not want the CCRB to compel a statement from the target police officer; in such a case, the prosecutor will be forced to demonstrate that he/she did not derive evidence from this statement or use the statement against the officer. In both situations, the prosecutor also wants to avoid the possibility that a CCRB outcome detrimental to his/her case will be admitted into evidence.

The CCRB will review prosecutors' requests that the CCRB suspend its investigations. Upon receiving such a request, the squad leader or the assigned investigator should ask the prosecutor to make the request in writing. If the case is already assigned to an investigator, the investigator should bring the request to the attention of his/her supervisors. The investigator should determine from the prosecutor whether the investigator is being asked to cease the conduct of all interviews. All contacts with the prosecutor should be documented in investigative actions. The investigator should subsequently send a contact letter ("DA hold letter"), already formatted in the CTS, to the complainant and victim(s) notifying them that the investigation is being suspended at the request of a prosecutor.

During the time that the investigation is suspended, the investigator should continue to obtain all departmental records and other documentary evidence that he/she will ultimately need to conclude the investigation. This is especially true for video and audio evidence. The investigator is required to keep in monthly contact with the prosecutor to follow the course of the investigation or criminal

prosecution. The investigator should also perform checks of OCA to follow the criminal prosecution. When the prosecutor lifts the hold, the investigator should request that the prosecutor document in a letter the fact that the CCRB is now permitted to continue its investigation. The investigator should subsequently send a contact letter (“end of DA hold letter”), already formatted in the CTS, to the complainant and victim(s) notifying them that the CCRB investigation, with the permission of the prosecutor, is now being resumed.

One difficult question that arises in CCRB investigations for which there is a parallel criminal investigation or prosecution is whether the investigator should contact the prosecutor and ask the prosecutor whether the CCRB should suspend its investigation. This is tricky because, on the one hand, the CCRB’s job is to objectively investigate misconduct complaints, not to work at the behest of the prosecutor. On the other hand, the CCRB does not want to interfere with the prosecution of serious criminal cases. In cases in which the investigator is aware that a prosecutor is investigating or prosecuting a police officer, e.g., police shootings, the investigator should contact the prosecutor, inform the prosecutor of the CCRB complaint, and discuss suspending the CCRB investigation. In cases in which the investigator is aware the civilian is being prosecuted for extremely serious offenses, e.g., murder, rape, or robbery, the investigator should make the civilian aware that anything they say can be subpoenaed. The investigator should always consult with his/her supervisor. The investigator should make the civilian’s attorney aware of the CCRB investigation. The investigator should never avoid contacting the prosecutor to obtain documents or other information for fear that the prosecutor will ask the CCRB to suspend its investigation.

Sensitive cases

Board members want to be apprised monthly regarding the facts and status of all police shootings (excluding the shooting of dogs), cases involving incidents that have received media coverage, and cases involving public figures. It is sometimes apparent upon receipt of a new complaint that the complaint is “sensitive.” Other times it is not apparent until the investigation is underway. Investigators should immediately apprise their supervisor of cases that appear to be “sensitive” cases. The supervisor should in-turn immediately apprise the executive staff of new “sensitive” cases. In cases in which a person died as a result of police action or inaction (such as cases with allegations that (a) police officer(s) refused or delayed medical attention), the entire board reviews each such case and decides whether to close the case as a board or refer the case to a panel for closure.

Executive Director Critical Incident Report (EDCIR)

Certain cases require additional scrutiny and will require the generation of an Executive Director Critical Incident Report (hereafter referred to as EDCIR) that should be sent to the Executive Director and the Chief of Investigations. The following categories are a guide as to when this report ought to be filed:

- Video or audio evidence shows action from an officer or officers that if immediate action is not taken (e.g., contacting IAB, placing officer on modified duty) there exists a continual risk to the public;
- Any time a staff member is injured requiring medical attention while on duty;
- Due to an issue in resources, the CCRB’s mission capability is degraded significantly;
- Staff misconduct that requires an internal or external investigation;
- Any case that is covered by ***national*** media.

Investigative Tasks and Standards

Because the facts and circumstances of complaints vary from case to case, some cases require a multitude of investigative tasks while others require only a few. These tasks also differ depending on whether the complaint is mediated or the investigation is truncated or completed. While the tasks might differ from case to case, the majority of cases with which the investigator is confronted involve a repetition of the same investigative steps. Regardless of the number or difficulty of the tasks required, the investigator's skill and timeliness in undertaking these investigative steps form the basis of CCRB's reputation and performance. The quality of any investigation is, in large part, dependent on the investigator's diligence in expeditiously conducting all required investigative tasks. Delays in conducting investigative steps inevitably lead to witnesses' inability to recall relevant aspects of the incident, may lead to the inability to find witnesses or other documentary evidence, and may impede the ability to discipline an officer who committed misconduct.

This section outlines the reasons CCRB complaints are processed differently, the tasks investigators must take in processing and investigating complaints, the speed with which these tasks are to be undertaken, and the timetable under which open investigative case files must be submitted to supervisors, including the board, for review.

DIFFERENT PATHS FADO COMPLAINTS TAKE

Mediation

The agency strives to mediate as many complaints as possible. As discussed extensively in the chapter on the mediation program, investigators are responsible for identifying cases eligible and suitable for mediation, contacting the complainant/victim, interviewing the complainant/victim by telephone or in-person, and offering the complainant/victim the opportunity to mediate. If the complainant/victim accepts mediation and the subject officer(s) is identified, the case will be referred to the Mediation Unit for further processing. In some cases, the board, the department, or the subject officer(s) will reject mediation; the case will then be returned to the investigator for investigation. In all other cases, the Mediation Unit will take the steps necessary to mediate the case. If the mediation is unsuccessful, the complainant/victim has the option of requesting that the complaint be investigated.

Truncated investigations

Truncated investigations are cases in which investigations are attempted but are not completed because of the complainant and/or victim's unavailability, lack of cooperation, desire to withdraw the complaint, or because the victim cannot be identified. Before the complaint is closed as complainant or victim unavailable (i.e., cannot be located) or uncooperative (refuses to respond to contact attempts or refuses to be interviewed), the investigator must have made the minimum number of contact efforts required by the agency. Before the complaint is closed as victim unidentified, the investigator must have taken all reasonable investigative steps to identify the alleged victim.

In all cases where the investigation has video footage which depicts clear misconduct, the case may become a full investigation even if the civilians involved do not cooperate with the investigation. Investigators should discuss these cases with their supervisors. This also applies to all cases in which the investigation is aware that video or audio evidence exists, or should exist, that may capture the incident in question.

No case should be recommended for truncation in which there exist(s) (an) outstanding request(s) for

BWC footage or any other type of video and/or audio evidence, nor should any case be recommended for truncation in which the investigator has made unresolved lines of inquiry into the requisition of video and/or audio evidence.

Additionally, no case should be recommended for truncation in which the agency has issued subpoenas, or is pursuing litigation, or is considering litigation in the furtherance of obtaining BWC footage or any other type of video and/or audio evidence without the expressed consent of one of the Chiefs of Investigation.

For further information regarding truncated cases, the investigator should review the section of this chapter regarding agency dispositions; the investigator should also review the chapter on closing reports.

Full investigations

A full investigation, as the name suggests, is a case in which an investigation runs its full course, meaning that investigators interview civilians and officers, obtain evidence, and make recommendations. A full investigation results in one of the following agency findings: substantiated; exonerated; unfounded; unsubstantiated; officer(s) unidentified; and miscellaneous. The meaning of these findings is discussed later in this chapter.

OVERVIEW OF INVESTIGATIVE STEPS

Upon receiving a new case, as discussed previously, it is imperative that the assigned investigator review the source of the complaint, e.g., the recorded telephone call, the complainant's letter, or the IAB log, compare that to the information in the CTS, and input any necessary changes into the CTS. This step should be documented in what will usually be the first investigative action of the case. In order to learn as much about the case as possible prior to speaking to witnesses, the investigator should, to the extent relevant and possible, access computer databases. Subsequently, the investigator will have to make efforts to locate witnesses and arrange for their interview, prepare interview reports, research applicable legal standards, obtain documentary evidence, interview police officers, and/or prepare closing reports in which the investigative staff makes recommendations to the board regarding the disposition of each allegation.

Other chapters detail how these investigative steps should be approached and performed. These investigative steps are also outlined in what is called the investigator's "tasks and standards." The agency guidelines that set forth the time with which these steps should be performed are incorporated in the standards for the respective tasks. Upon beginning at the agency, each investigator must sign his/her tasks and standards; these tasks and standards are the basis upon which the investigator is evaluated.

ONGOING CONTACT WITH THE COMPLAINANT

During the investigation, the investigator will be required to send letters to the complainant, the alleged victim(s), and other witnesses. [REDACTED]

[REDACTED] Some of these letters are designed to inform the complainant of the status of his/her case. Others are designed to gain the cooperation of witnesses.

When the investigator is dealing with a complainant or alleged victim through an attorney, correspondence should be sent to the attorney and copied to the relevant party. Regardless of whether

a letter to the complainant is required, the investigator should continually make efforts to keep in touch with the complainant and alleged victim(s) and apprise them of the status of the investigation, unless the civilian's attorney has expressly prohibited contact with his/her client.

CONTACTING MINORS

When a complaint is filed by and/or on behalf of anyone under the age of 16, the investigator first must contact their legal guardian and obtain permission to speak to the minor. The guardian's consent must be recorded as per agency procedure and noted in an IA. This rule also applies to contacting witnesses under the age of 16.

Verification forms can be signed by anyone 16 years and older. HIPAA forms must be signed by a legal guardian for anyone under the age of 18.

For the purpose of mediation, anyone under the age of 18 requires a legal guardian to agree to the mediation session. The legal guardian must also accompany a minor to the mediation session and sign the confidentiality agreement prior to the start of the session.

Board rule § 1-35 and executive order 40

Keeping complainants informed about the status of their complaints is a requirement of the board and of the city of New York. § 1-35 of the CCRB rules, "Communications with and Notifications to Complainants, Alleged Victims, and Reporting Non-Witnesses Regarding Status of Complaints" stipulates:

- (a) Within seven business days of the receipt of a complaint, the Board will notify a Complainant, Alleged Victim, and/or Reporting Non-Witness by telephone or letter that the Civilian Complaint Review Board has received the complaint, and must identify the Case number and Agency Staff assigned to investigate the Case.
- (b) The Civilian Complaint Review Board will, within seven business days of a final decision of the Board, write to the Complainant and/or Alleged Victim with such findings and recommendations.
- (c) If an allegation is substantiated and Charges are recommended by a panel or the Full Board, the Civilian Complaint Review Board will, as soon as it is determined under 38-A RCNY § 1-42, advise the Complainant and/or Alleged Victim in writing whether such allegation will be prosecuted and, if it will, whether the Board or the Police Department Advocate will be responsible for prosecuting it.
- (d) The Civilian Complaint Review Board will within seven business days of the Civilian Complaint Review Board's receipt of the Police Commissioner's final determination notify the Complainant and/or Alleged Victim by letter of the final action taken by the Police Commissioner. (Amended City Record 1/2/2018, eff. 2/1/2018)

On October 21, 1997, to ensure that members of the public are apprised of the status of and results of their complaints, Mayor Giuliani issued executive order 40 regarding the notification and processing of civilian complaints. That executive order is set forth below:



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 40

October 21, 1997

NOTIFICATION AND PROCESSING OF CIVILIAN COMPLAINTS

WHEREAS, the Civilian Complaint Review Board is charged with the legislative mandate to fairly and independently investigate certain allegations of police misconduct toward members of the public; and

WHEREAS, it is of the utmost importance that members of the public and the New York City Police Department have confidence in the professionalism and impartiality of the Civilian Complaint Review Board; and

WHEREAS, pursuant to the Charter, and the Rules of the CCRB the individuals who have filed complaints with the Civilian Complaint Review Board have the right to be kept apprised of both the status and results of their complaints brought against members of the New York City Police Department; and

WHEREAS, it is important to investigate and resolve civilian complaints in a timely manner; and

WHEREAS, the sharing of information between the Civilian Complaint Review Board and the New York City Police Department is essential to the effective investigation of civilian complaints;

NOW THEREFORE, by the power invested in me as Mayor of the City of New York, it hereby is ordered:

Section 1 - Notice to Civilian Complainants. The Commissioner of the New York City Police Department and the Civilian Complaint Review Board shall expeditiously:

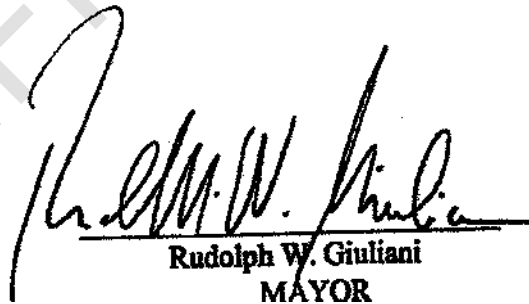
- A. Establish standards for providing timely written notice to civilian

complainants regarding the status of civilian complaints during the stages of the Civilian Complaint Review Board's review and investigation process, including final Board action on the pending complaint.

- B. Establish standards for providing timely written notice to civilian complainants regarding the disposition of all cases referred for disciplinary action by the Civilian Complaint Review Board to the Commissioner for the New York City Police Department, including the result of all such referred cases.
- C. The standards established shall require that complainants be given a name, address and telephone number of an individual to contact in order to give or obtain information.

Section 2. The Police Commissioner and the Civilian Complaint Review Board shall establish standards for the timely processing and resolution of civilian complaints and the sharing of necessary information between the agencies.

Section 3. This order shall take effect immediately.


Rudolph W. Giuliani
MAYOR

STAGES OF THE INVESTIGATIVE PROCESS WHEN CONTACT WITH THE COMPLAINANT IS REQUIRED

Within 24 hours of being assigned to a new case

Within one business day of being assigned the complaint, the investigator must attempt to arrange to interview the complainant (and/or victim) by contacting the complainant by telephone and e-mail. If the investigator is unable to reach the complainant by telephone and/or e-mail, the investigator should, [REDACTED] send a “first please call letter” to the complainant. This letter requests that the complainant call the investigator to discuss the case.

When the case is placed on and released from a prosecutor’s hold

As discussed above, the CCRB will review prosecutors’ requests that the CCRB suspend its investigations. Honoring this request, however, will inevitably delay the CCRB’s investigation. If the CCRB agrees to place the case “on hold,” the investigator must send to the complainant and victim(s) a letter to let them know that the investigation of his/her case will be delayed. [REDACTED]

[REDACTED] When the prosecutor lifts the hold and permits the CCRB to proceed with its investigation, the investigator must also inform the complainant and victim(s) about this development. [REDACTED]

When the case is reassigned

When the case is reassigned to a new investigator, the new investigator must send to the complainant and victim(s) a letter entitled “reassigned investigator letter.” Upon receipt of the letter, the complainant and victim(s) will know whom he/she can contact with questions about the case.

When the CCRB refers the case to another agency for investigation

When the CCRB refers the case to another agency for investigation, the CMU is responsible for notifying the complainant by letter.

After the board closes the case

When the board closes the case, the CMU is responsible for sending letters (internally referred to as Disposition Letters) to the complainant, the alleged victim(s), and the subject officer(s) that inform them of the board’s findings.

When the board reopens the case

Following board closure of a case, a party to the case, i.e., the complainant, an alleged victim, or a subject officer, may request that the board reopen the case. Though the process to be followed in such a situation is described in further detail below, the party that makes the request must be informed, in writing, of the outcome of that request. Additionally, the agency must notify all the parties should the board reopen the case.

When the party’s request to reopen is denied, the agency counsel has the responsibility of sending a letter to the person who asked that the case be reopened. When the request to reopen is granted, the

investigator has the responsibility of sending letters to the complainant and the alleged victim(s). [REDACTED]

SUPERVISORY REVIEW OF CASES

Investigative case plan and time-triggered reviews

Though squad supervisors are authorized to review cases at any time, as set forth in task four of the investigative tasks and standards, the agency requires investigators to submit organized case files to their supervisors at established times. First, within three days of interviewing the complainant and/or victim(s), the investigator must summarize the interview(s), prepare document requests and subpoenas, and draft an investigative case plan. The case plan, which is generated through the CTS, should outline the known facts, the allegations raised by the complaint, the issues presented by the complaint, and the actions required to investigate the complaint. [REDACTED]

[REDACTED] both the investigator and supervisors have to sign the plan.

If after 45 days of the receipt of the case, the investigator believes that s/he will not close the case in under 90 days, it is incumbent on the investigator to notify her/his supervisor. In those cases, it is incumbent on the supervisor to check back with the investigator at 60 days to assess if the projection remains the same. If it still seems likely that the case will eclipse the 90 day benchmark, the supervisor must email the Chief of Investigations.

Reassigned cases

Cases that are reassigned tend to age unnecessarily. As a result, for cases that are reassigned, the investigator must submit the case file for review one week after the case is assigned to them.

SUBMISSION OF COMPLETED CASES TO THE CASE MANAGEMENT UNIT

Upon completion of either a truncated or full investigation, the investigator must draft a recommendation report. Generally, at least one supervisor must review that closing report along with the investigative file. After the closing report has the requisite signatures, the squad must electronically transfer the case to the CMU; it must also give the case file to the CMU so that it can be processed for the board's review. Each completed investigation will include the investigative staff's recommendation on how the board should resolve each allegation of misconduct. The dispositions of truncated and full investigations are discussed in detail below.

The CMU electronically scans each completed investigation into the electronic document management system ("EDMS"). The CMU then assigns the case to a board panel or the full board for its review.

Disposition of Cases

BOARD PANEL AND FULL BOARD CLOSURE OF CASES

The most prominent role played by the board in the investigative process is its review of all completed investigations. Although investigators make recommendations to the board of how each allegation should be resolved, the board decides the disposition of each allegation. Thus, the board must review every fully investigated case before it is officially closed. Because of the large number of complaints and investigations completed each month, it is not practical for each case to be reviewed by each of the 13 board members. Instead, as authorized by the city charter, panels of three board members usually review each case. “No such panel shall consist exclusively of members designated by the city council, or designated by the police commissioner, or selected by the mayor.”^{xxiii} By tradition, each panel consists of one city council designee, one police commissioner designee, and one member selected by the mayor. A board panel can dictate the outcome of any allegation by a two-to-one vote.

When board members meet in panels to review cases, they can: 1) return the case to the investigative staff for further investigation; 2) add allegations; 3) make findings on each FADO allegation; 4) refer the case to the full board for decision; 5) refer the case to another agency; and/or 6) note that an officer committed other misconduct. If the board panel determines that an officer committed misconduct, it will usually recommend what level of discipline the board believes the police commissioner should impose. If the board flips a disposition, the investigator can ask for reconsideration.

There are also situations when the full board (all 13 members at the executive session of its monthly meeting) decides the outcome of a case. The full board initially reviews all completed cases in which the police conduct allegedly resulted in an individual’s death and may opt to decide the case itself rather than refer it to a board panel. In addition, a single member of a board panel can request that the full board decide a case. The full board can dictate the outcome of any allegation by a seven-to-six vote.

TRUNCATED INVESTIGATION DISPOSITION

Truncation guidelines

The decision to truncate an investigation is made only after the investigative staff has followed a set protocol. Investigators must keep in mind that the following protocols establish minimum standards. Investigators must take into account the entire scope of the complaint and the reasonableness of their efforts to contact the involved parties. Doing so will often lead an investigator to go well beyond the minimum standards.

Number of Contact Attempts

Make five (5) phone calls, send two (2) letters, and send two (2) emails to all complainants and victims. If only an address is known for the civilian, then send three (3) letters (in addition to the phone calls). If only an email address is known for the civilian, then send three (3) emails (in addition to the phone calls). Letters should be spaced apart by five (5) business days. Emails and phone calls should be

reasonably spaced apart (e.g. the idea is not to make 5 calls in 5 days and be done). When unable to reach (a) civilian(s), the investigator should make phone calls on different days of the week, and at different times of the day (i.e., morning, afternoon, and evening). Of course, this will not be the case if a civilian informs the CCRB that they are only available at certain times/days.

If a person misses one (1) scheduled interview, the minimum contacts listed above still need to be satisfied and a missed appointment letter must be sent, which can be counted towards satisfying the letter requirements.

If a complainant or victim misses two (2) scheduled interviews without calling in advance to cancel or reschedule, that civilian will be deemed uncooperative with no further contact attempts required. If, however, the civilian makes contact attempts to reschedule the second missed interview, reasonable attempts should be made via phone and email to reschedule. [REDACTED]

If a civilian schedules an interview for himself/herself and an additional person, the failure of the additional person to arrive for the scheduled interview will not be counted against them if the investigator has not confirmed the scheduled interview directly with the person who did not appear. This shall not apply to minors who were scheduled by their guardian.

In situations where the person does not respond until the last required contact attempt, a reasonable number of further contact attempts should be made to obtain a verified statement.

Generally, attempts to contact civilian witnesses of an incident should not be made until after the first complainant/witness or victim has provided a verified statement. Contact attempts to witnesses should adhere to the standards noted above, although only in certain circumstances will it be required for a witness to provide a verified statement. [REDACTED]

While the CCRB has set minimum contact efforts that must be made in order to recommend to the board that a case be truncated, there will be cases where a greater effort to locate and/or gain the cooperation of the complainant/victim is desirable. In cases involving gun shots, a gunshot wound, death, fractures, lacerations with stitches, chokeholds, sensitive cases, and cases deemed to be serious in nature by a Deputy Chief of Investigation or Chief of Investigation, all will require contact attempts beyond the minimum requirements. This often will include making a home visit. Investigators should check the Booking and Arraignment Disposition System (BADs) to identify safety concerns prior to making the home visit.

For the complainant/victim who expresses a desire to withdraw his/her complaint, in a recorded conversation the complainant/victim should explain his/her reasons for withdrawing the complaint and affirm that the withdrawal is voluntary and not a product of coercion by the NYPD or the CCRB. [REDACTED]

Investigators faced with a complainant/victim who fears retaliation from the officer(s) should inform the complainant/victim of the following:

1. If an officer does interfere with the investigation and/or retaliates against a complainant, the officer's actions constitute misconduct (independent of the original complaint);
2. The CCRB will investigate all additional FADO allegations against the officer as part of a new complaint; and
3. The CCRB will immediately notify IAB of the new allegation.

After the complainant/victim verbally communicates his/her desire to withdraw the complaint, the assigned investigator must tell the complainant/victim that a withdrawal letter will be sent and must be signed and returned in the self-addressed stamped envelope that will be provided with the letter. The investigator must then send the complainant/victim the "withdrawal letter." If the squad supervisor signs a closing report that clearly indicates that he/she has listened to the recorded withdrawal statement and that the complainant/victim withdrew his/her complaint voluntarily, the case can be submitted with a recommendation of "complaint withdrawn;" [REDACTED]

Minimum Days to Complete a Truncation

There should be a minimum of twenty-one (21) days between the date an investigator is assigned the case and the date the investigator submits the case for truncation. The exceptions to this standard would be if the complainant(s)/victim(s) withdraw the case, if there is insufficient information to make further contact attempts, or if all complainants and victims have missed two interview appointments with no attempts to contact the CCRB to reschedule.

Additional Steps to Locate Contact Information

For cases in which contact information for a civilian is incomplete, the following steps should be taken:

- Search CTS by name to identify prior CCRB cases where their contact information may be contained. Searches should also be made in CTS by phone number, if known, to identify additional household information.
- Individuals who have served as points of contact for the civilian in past CCRB cases should be contacted in an attempt to locate the civilian.
- Search Cole's Directory and the DMV Database.
- Search LexisNexis and CLEAR [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Check BADS for prior arrests. If they do have a prior arrest, ascertain whether the person had a different address listed or if they made a phone call or provided their phone number to the NYPD. If there is a prior address, send a letter to that address. If there is a phone number, contact the person that they made the phone call to but do not discuss the CCRB incident.
- For cases received from IAB, calls should be made to IAB for them to search their database for further contact information that may not have been included on the IAB log.
- For cases where there is reason to believe that a civilian is homeless, investigators should contact the NYC Department of Homeless Services to determine if the person currently resides within the homeless shelter system or the agency has further contact information for him/her.

When multiple phone numbers, addresses or emails are identified as being connected to a complainant or victim who you have been unable to reach, all possible contact routes should be attempted before truncating the case.

Uncooperative Civilians after Initiation of a Full Investigation

If after providing a verified statement a complainant or victim asks for their complaint to be withdrawn or declines to further participate in its investigation, it does not mean that the case should automatically be truncated. Decisions regarding whether to truncate a case after the initiation of a full investigation should be determined based on the particular circumstances of that case, such as whether there is enough information to proceed and the stage of the investigation. Any questions regarding whether such a case should be truncated or remain open pending the completion of the full investigation should be brought to a Deputy Chief of Investigations or the Chief of Investigations.

EXPLANATION OF TRUNCATED INVESTIGATION FINDINGS

If the complainant is not an eyewitness to the incident or is unavailable or uncooperative, the investigator should attempt to interview the alleged victim(s) to the incident before recommending that the board close the case without conducting a full investigation.

Complainant uncooperative

The CCRB will close the case as “complainant uncooperative” when the CCRB contacts the complainant, and the complainant refuses to cooperate.

Alleged victim uncooperative

The CCRB will close a case as “alleged victim uncooperative” when the investigation cannot be conducted without a statement from the victim, who has refused to cooperate.

Complainant unavailable

The CCRB will close a case as “complainant unavailable” when the agency cannot locate or find the complainant. This could also include cases in which contact attempts were made but no response was elicited.

Alleged victim unavailable

The CCRB will close a case as “alleged victim unavailable” when the investigation cannot be conducted without a statement from the victim, who cannot be located. This could also include cases in which contact attempts were made but no response was elicited.

Complaint withdrawn

The CCRB will close a case as “complaint withdrawn” when the complainant and/or victim voluntarily decides against pursuing the complaint either verbally or in writing. If a complainant desires to withdraw a complaint, but there are additional complainants and/or victims in the case,

contact attempts need to be made to the additional complainant/victims. If the additional complainants and/or victims are unavailable or uncooperative, the case should be closed as complaint withdrawn. If even one other complainant and/or victim wishes to pursue the complaint, the investigator should make all reasonable attempts to obtain a verified statement and investigate the allegations.

***Note: non-complainant victims cannot withdraw complaints or allegations, as they did not make the allegation(s); only complainants can withdraw a complaint.**

Closed—pending litigation

The CCRB will close a case as “closed—pending litigation” when the complainant and/or victim choose not to cooperate with the investigation on the advice of their attorney. [REDACTED]

[REDACTED]

[REDACTED]

If the squad leader determines that the court action has ended, the manager and/or the investigator who conducted the preliminary investigation will make attempts to contact the complainant/victim to ascertain whether they are interested in reopening the case; the minimum contact attempts without reaching the alleged victim should include at least three calls, one letter, and one email. The letters and email will be accompanied by a Reopen Request form, and with the letters, a prepaid envelope addressed to the CCRB.

If the alleged victim wishes to reopen the case, an interview will be scheduled. As soon as a completed Reopen Request form has been obtained, the squad leader will draft a memo to the Executive Director recommending that the case be reopened.

In addition to the above procedure, if after nine months of being truncated as “closed – pending litigation” the case is still closed, the manager who oversaw the case will generate a letter reminding the alleged victim and attorney that they may reopen their complaint when they are ready to do so. This letter will also notify the complainant/victim and attorney of the 18 Month Statute of Limitations, and will be accompanied by a Reopen Request form and a prepaid envelope addressed to the CCRB’s Director of CMU.

If after the closure of the pending court action the complainant/victim declines to reopen the case, or the CCRB is unable to reach the alleged victim, the case will remain closed unless the agency is in possession of video (or other clear evidence) of the incident that captures enough of the event to allow for a full investigation to be conducted. In such instances in which evidence exists that would allow the CCRB to conduct an investigation without the complainant or alleged victim’s statement, the squad leader should draft a memo to the Executive Director recommending that the case be reopened.

In those instances where the CCRB case was “closed – pending litigation” due to a pending civil action, if after nine months the civil litigation is still ongoing and the CCRB has video or other evidence that captures clear misconduct, the squad leader should speak with the Chiefs of Investigations to determine whether the CCRB should reopen the case and conduct a full investigation regardless of the status of the civil litigation and the lack of cooperation of the complainant and alleged victim.

Complainant unidentified

The CCRB will close a case as “complainant unidentified” when the agency cannot identify the complainant.

Victim unidentified

The CCRB will close a case as “victim unidentified” when the agency cannot identify the victim.

Administratively closed cases

This section addresses a very particular type of case – one in which a civilian did not initiate the complaint.

In these circumstances, an officer (typically a supervisor) files a report with IAB to document that a prisoner was injured in custody and/or an officer used physical force. IAB then refers the case in part or in whole to the CCRB.

The investigator should reach out to the civilian using all investigative methods applied to any other complaint with the following difference: *if the civilian(s) does/ do not respond to any of the contact attempts (for these purposes: 2 calls, 1 letter, 1 email), the case can be closed as “administratively closed.”* This is because neither the NYPD nor the CCRB ever received a complaint about the officer’s conduct directly from a civilian. The report was filed as a preventative measure and to encourage self-reporting of incidents that may have the appearance of misconduct.

Following the ruling in *Lynch v. CCRB*, the Agency was barred from initiating investigations solely filed by (a) reporting non-witness(es). As a result, cases filed by a reporting non-witness shall be treated the same as cases referred to the CCRB from IAB where there is no civilian witness (outlined above). Excluded from this category of complaints are the following reporting non-witnesses: attorneys acting in their official capacity; any person who is acting in the role of a parent, including but not limited to parents and legal guardians; and next of kin in situations where an individual is deceased or in a state that renders them unable to pursue a complaint on their own behalf (e.g. coma). This does not impact the CCRB’s ability to preserve evidence for a potential complaint (e.g. gathering video evidence that may otherwise expire).

***Note: if the case involves serious injury and/or is sensitive in nature, then discuss with the DCI before submitting for closure.**

No jurisdiction

Instances where the incident is not under CCRB’s jurisdiction nor is it under any other agency’s jurisdiction should be closed as “no jurisdiction” and sent to a truncation panel. For instance, a civilian calls 911 and tells the operator that the police are beating up their friend. Upon speaking to the civilian, the civilian states that they misstated the issue and that they were requesting police officers because their friend was being assaulted. Absent other features, this case would be closed as “no jurisdiction.”

BURDEN OF PROOF USED BY THE BOARD

Pursuant to subchapter D, § 1-33 of the CCRB's rules, "the [b]oard shall employ a preponderance of the evidence standard of proof in evaluating cases." This is the same burden of proof that administrative law judges use in assessing whether police officers committed misconduct. Thus, there must be a preponderance of the evidence that proves that the allegation should be substantiated, exonerated, or unfounded.

For a more detailed discussion of what preponderance of the evidence means, the investigator should review the chapter on closing reports.

EXPLANATION OF FULL INVESTIGATION FINDINGS

Under the City Charter, the board has the power to "make findings" upon complaints. After a complaint is fully investigated, the board will make one of the following findings with respect to each FADO allegation:

Substantiated

There is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and committed misconduct.

Unsubstantiated

There is insufficient evidence to establish whether an act of misconduct occurred.

Exonerated

Although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

Unfounded

The act that is the basis of the allegation did not occur.

Officer(s) unidentified

The investigation is unable to identify the subject(s) of the alleged misconduct.

Miscellaneous

The board has jurisdiction over complaints against individuals currently employed as officers of the New York City Police Department. If the subject of the allegation(s) does not meet these criteria – for example, the subject retired, resigned or was terminated – the board will close the allegation with a finding of miscellaneous.

OTHER MISCONDUCT DETERMINATIONS

During the investigation of complaints, the investigator may find that the officer committed misconduct, not traditionally considered FADO misconduct, about which the police department should be aware. The investigator may recommend that the board inform the department about such conduct, typically the failure to file a stop and frisk report, failure to prepare a memo book entry, or intentionally making a false statement at a CCRB interview. When the board determines that the officer committed “other misconduct,” it will notify the department.

DISCIPLINARY RECOMMENDATIONS

Under the City Charter, the board has the power to “recommend action” upon complaints. When the board substantiates one or more allegations of misconduct against a subject officer, it recommends what level of discipline the board believes is appropriate. Because the board does not have access to and cannot review the subject officer’s personnel file, the board’s disciplinary recommendations are based upon the facts and circumstances of the complaint and the subject officer’s CCRB complaint history.

The board makes one of four disciplinary recommendations to the police commissioner:

Instructions

The board recommends to the police commissioner that the subject officer receive instructions regarding the proper procedures that should have been used during the incident. This is training at the command level.

Formalized Training

The board recommends to the police commissioner that the subject officer receive formal training, which generally takes place at the police academy.

Command discipline

The board recommends to the police commissioner that the subject officer receive a command discipline. The maximum penalty that can result from a command discipline is the loss of ten vacation days.

Schedule A command discipline carries a penalty of up to five (5) lost vacation days. Schedule B

command discipline carries a penalty of up to ten (10) lost vacation days. **Charges and specifications**

The board recommends to the police commissioner that the department file charges against the subject officer, which may result in an administrative hearing. The board makes this recommendation

in cases where it believes the subject officer should receive a more serious penalty than a command discipline. The maximum penalty that can result from charges and specifications is termination, though more typically the penalties involve loss of vacations days and suspensions without pay, sometimes coupled with the subject officer being put on dismissal probation.

REQUESTS TO REOPEN CLOSED CASES

The CCRB does not have an appeals process. However, the Rules of the CCRB do contain provisions which may lead to a case being re-opened. They are as follows (bracketed headings added):

§ 1-36 Reconsideration or Reopening of Cases.

(a) Upon receipt of a written request to reconsider or reopen a Case from a Complainant, Alleged Victim, Victim or subject police officer, a panel, Chair, or Executive Director may:

- (1) Reopen any Case previously closed without a full investigation; or
- (2) Agree to reconsider any Case previously closed with a full investigation if
 - i. New evidence becomes available which could reasonably lead to a different finding or recommendation in the Case; or
 - ii. A previously unavailable or uncooperative witness becomes available which could reasonably lead to a different finding or recommendation in the Case; or
 - iii. If reopening or reconsidering the Case serves the interests of justice.

(b) Upon receipt of a written request sent by the Police Department Advocate requesting the reconsideration of a previously fully investigated Case with panel findings and recommendations, a panel, the Chair, or the Full Board may agree to reconsider the penalty and/or disposition of an allegation if:

- (1) The penalty recommended for the Case by the deciding panel or Full Board against any subject officer is found by the deciding panel or Full Board to be inappropriate or excessive; or
- (2) There exists new facts or evidence that were not previously known by the deciding panel or Full Board which could reasonably lead to a different finding or recommendation in the Case; or
- (3) There are matters of fact or law which are found to have been overlooked or misapprehended by the deciding panel or Full Board or if reconsidering the case serves the interests of justice. In considering requests from the Police Department Advocate, any such request must be made to the Chair, Executive Director, deciding panel, or Full Board, addressed to the Executive Director, within 30 days from receipt of the Civilian Complaint Review Board's initial findings and recommendations of a Case, absent good cause for any such delay beyond 30 days.

(c) The Full Board, Chair, a panel, or Executive Director considering a request to reopen or reconsider a Case will have full discretion in making a determination, and may properly consider all relevant circumstances, including, but not limited to: any delays on the part of the person requesting that the Case be reopened; new, material information as to the Complainant, Alleged Victim, Victim, the subject officer, or any civilian or police witness; and the practicability of conducting a full investigation of the allegations contained in the Case within any applicable limitation period.

(d) If a previously closed Case is reopened or reconsidered:

- (1) If all members of the previously deciding panel are presently members of the Board, then that previously deciding panel will be reconvened to reconsider the Case.

(2) If any member of the previously deciding panel is no longer a member of the Board, then the remaining members of the previously deciding panel will be reconvened with a replacement panel member designated by the Chair as required by 38-A RCNY § 1-31(b) to reconsider the Case.

(3) If all members of the previously deciding panel are no longer members of the Board, the Chair will select a panel will be convened (sic) to reconsider the Case pursuant to 38-A RCNY § 1-32. (Added City Record 1/2/2018, eff. 2/1/2018)

The investigator should discuss with complainants and others only the procedure for re-open requests and not the likelihood of their case being re-opened. The investigator should tell them that all re-open requests should be in writing and sent as soon as possible to the CMU Director, who oversees the process by which re-open requests are considered by the agency. If a person writes to the investigator instead, he/she should immediately place the letter in the CMU Director's mailbox.

A re-open request for a case closed *after* a full investigation should focus on the new evidence and/or witness and why such new evidence and/or witness may reasonably result in a different finding or recommendation.

A re-open request for a case closed *without* a full investigation should focus on the reasons the person did not initially follow through with the complaint and the reasons for any delays in asking that the case be re-opened.

Substantiated Cases and the Disciplinary Process

PROCESSING SUBSTANTIATED AND OTHER MISCONDUCT CASES AT THE CCRB

Once the investigator decides to recommend that the board substantiate one or more allegations against a subject officer, the investigator must create a Summary of Facts IA.

Once the board decides a case, CMU will be responsible for preparing all necessary correspondence regarding the board's decision to the Department (the Office of the Police Commissioner, the Department Advocate's Office, and the Internal Affairs Bureau), the complainants and victims, and subject officers.

If the board decides not to follow a recommendation from the investigator, the CMU Director will draft a memo to the investigator explaining the reasons the board decided not to follow the investigator's recommendation. If the investigator decides to defend his or her original recommendation, he or she must inform the CMU Director immediately by email. The investigator must then follow up with the CMU Director within 2 business days, providing the CMU Director with a detailed explanation that he or she can provide to the panel.

If the board decided to substantiate an allegation where the investigator recommended another disposition, the investigator must email the CMU Director a new summary of facts that incorporates the board's changes so that the CMU Director can include the new summary in all correspondence.

If the board decides that one or more allegations in a case need further investigation, the CMU Director will draft a memo to the investigator that explains what needs to be done. The investigator has fourteen (14) days from receipt of the memo to respond to the board's request. If the investigator needs more time, the investigator's squad supervisor must request the additional time from the panel, after first notifying his or her Deputy Chief of Investigations and the Chief of Investigations.

Sometimes, a board member may have a question about a case prior to the board or panel meeting to decide the case. The investigator should draft a response in conjunction with their squad leader and any attorney who consulted on the case. The investigator must respond to these questions ASAP, and should endeavor to respond prior to the actual meeting in which the case is discussed.

Any correspondence with board members must include CC's to the Executive Director, the Chief of Investigations, and the CMU Director.

THE DISCIPLINARY PROCESS

When the board substantiates one or more allegations of misconduct, it generally makes a disciplinary recommendation and forwards its findings and investigative file to the police department. The department can unilaterally order that the respondent (the MOS facing discipline) be retrained or given the opportunity to accept a command discipline prior to the service of charges.

On April 2, 2012, the NYPD and the CCRB signed a Memorandum of Understanding which conferred on the CCRB the power to prosecute substantiated cases where the board recommended "charges and specifications," the most serious discipline. As a result, the CCRB's Administrative Prosecution Unit (here and after referred to as the "APU"), now prosecutes nearly all of these cases, with limited exceptions.

An administrative hearing will be brought before the Deputy Commissioner of Trials who functions as an administrative law judge. Ultimately, the responsibility for imposing discipline within the police department rests solely with the Police Commissioner who, even after a finding against an officer by the CCRB and an administrative law judge, can still make new findings of fact and law. In such cases, the Police Commissioner must explain his findings in writing. A police officer can appeal the final adverse decisions of the Police Commissioner to non-administrative courts.

The APU is comprised of attorneys and investigators who are responsible for handling and

prosecuting those cases in which charges have been recommended by the board. At times, the APU may request the investigator who conducted the initial investigation testify at administrative hearings. Should this occur, the investigator should fully cooperate with the APU. The APU will release a monthly report containing trial verdicts, as well as the final decision rendered by the Police Commissioner regarding each administrative trial that has been completed.

ATTORNEY CONSULTS

Effective September 25, 2017, all cases involving the following allegations require that an investigator and/or a squad leader consult with an attorney from the CCRB's General Counsel's office **prior to any interview with MOS**: search of person, vehicle, or premises; entry of premises (absent a search warrant); strip-search; and sensitive cases. Investigators and squad leaders are required to research case law prior to the consultation and they should be prepared to discuss the discovered case and/or why they could not find the most relevant case law. The consulting attorney will review the case law obtained by investigators, discuss the legal analysis, or help analyze obscure legal issues and find appropriate cases. [REDACTED]

[REDACTED]. Follow-up consultations and attorney reviews of legal analysis may be necessary and one of the attorneys from the General Counsel's office will make themselves available for such follow-up reviews. However, squad leaders should always be the first, and maybe the only, person to review the closing report.

While the aforementioned cases require a consult, at the discretion of the squad leader, other cases may be legally complicated enough to require an attorney consult. The attorneys should only be consulted on legal analysis issues, any fact-based questions, additional investigative steps, or pleading language should be discussed with the Deputy Chief of Investigations or the Director of Quality Assurance and Improvement.

Confidentiality of CCRB Investigative Files and Requests for Case Information

RESPONDING TO SUBPOENAS, FOIL REQUESTS, AND OTHER REQUESTS FOR INFORMATION

The CCRB has a feature on its website called "Complaint Status Lookup," which is open to the public insofar as they possess a case number. Complainants and victims should be provided with this website (<http://www1.nyc.gov/apps/ccrb-status-lookup>) along with their case number when they provide a verified statement. This allows civilians the opportunity to review basic information as to the status of their complaint.

OIG-NYPD

Case referrals from the OIG-NYPD to the CCRB should be sent to the Intake Unit at

intake@ccrb.nyc.gov.

Inquiries from the OIG-NYPD about a CCRB complaint should be directed to the Director of NYPD Relations and Inter-agency Evidence Collection Unit.

Requests from OIG-NYPD for documents or other evidence from CCRB cases should be addressed to the Special Assistant to General Counsel.

Law Department, ADAs, and U.S. Attorneys

If Investigators are directly contacted by the Law Department, ADAs, or U.S. Attorneys, they may provide basic information related to the status of the complaint, such as whether it is open, closed, or if officers have been interviewed.

All other requests from such personnel, especially requests for records or materials, should be referred directly to the Special Assistant to the General Counsel, at GovtRequests@CCRB.NYC.gov.

FOIL Requests

When asked how to file a FOIL request, Investigators should advise that such requests can be submitted via the CCRB website or by email to the Records Access Officer at outgoingCCRBFOIL@CCRB.NYC.gov.

**Chapter One Appendix
New York City Charter
Rules of the Civilian Complaint Review Board
Effective February 1, 2018**

New York City Charter

CHAPTER 18-A CIVILIAN COMPLAINT REVIEW BOARD

§ 440. Public complaints against members of the police department.

(a) It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section.

(b) Civilian complaint review board.

1. The civilian complaint review board shall consist of thirteen members of the public appointed by the mayor, who shall be residents of the city of New York and shall reflect the diversity of the city's population. The members of the board shall be appointed as follows: (i) five members, one from each of the five boroughs, shall be designated by the city council; (ii) three members with experience as law enforcement professionals shall be designated by the police commissioner; and (iii) the remaining five members shall be selected by the mayor. The mayor shall select one of the members to be chair.

2. No member of the board shall hold any other public office or employment. No members, except those designated by the police commissioner, shall have experience as law enforcement professionals, or be former employees of the New York city police department. For the purposes of this section, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.

3. The members shall be appointed for terms of three years, except that of the members first appointed, four shall be appointed for terms of one year, of whom one shall have been designated by the council and two shall have been designated by the police commissioner, four shall be appointed for terms of two years, of whom two shall have been designated by the council, and five shall be appointed for terms of three years, of whom two shall have been designated by the council and one shall have been designated by the police commissioner.

4. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

(c) Powers and duties of the board.

1. The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual

orientation and disability. The findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

2. The board shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels, which shall consist of not less than three members of the board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings and recommend action on such complaints. No such panel shall consist exclusively of members designated by the council, or designated by the police commissioner, or selected by the mayor.

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints submitted pursuant to this section.

4. The board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

5. The board is authorized, within appropriations available therefor, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The board shall employ civilian investigators to investigate all complaints.

6. The board shall issue to the mayor and the city council a semi-annual report which shall describe its activities and summarize its actions.

7. The board shall have the responsibility of informing the public about the board and its duties, and shall develop and administer an on-going program for the education of the public regarding the provisions of this chapter.

(d) Cooperation of police department.

1. It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for the investigation of complaints submitted pursuant to this section, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with the investigation of complaints submitted pursuant to this section, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

3. The police commissioner shall report to the board on any action taken in cases in which the board submitted a finding or recommendation to the police commissioner with respect to a complaint.

(e) The provisions of this section shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department. Nor shall the provisions of this section be construed to limit the rights of members of the department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

(f) The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

HISTORICAL NOTE

Section added L.L. 1/1993 §1 eff. July 4, 1993.

HISTORICAL NOTE TO FORMER SECTION 440

Added by L. L. 1966, No. 40.

Subd. (a) amended L. L. 55/86 §1.

Subd. (c) amended L. L. 55/86 §1.

Subd. d added L. L. 55/86 §2.

Subds. e-g relettered L. L. 55/86 §2 [formerly Subds. d-f].

Subd. (c) amended at General Election, November 7, 1989.

CASE NOTES TO FORMER §440

¶1. The appointment of a commission by the Mayor to investigate alleged police corruption and the City's anti-corruption procedures was not improper under this section where the purpose of the commission was to generally explore the overall situation regarding police corruption and not merely to hear and recommend on specific civilian complaints regarding the derelictions of particular police officers. *Kiernan v. City of N. Y.*, 64 Misc. 2d 617, 315 N. Y. S. 2d 74 [1970], *aff'd*, 306 N. Y. S. 2d 967 [1970].

¶2. Proceedings before the Civilian Complaint Review Board not being final intra-agency determinations, the records thereof can be exempted by the New York City Police Department from the operation of the Freedom of Information Law. *People v. Morales*, 97 Misc. 2d 733, 412 N. Y. S. 2d 310 [1979].

¶3. NYC Council is vested with power to amend voter-initiated measure to eliminate the requirement that all Civilian Complaint Review Board appointees be full-time members or employees of the police department. *Caruso v. City of New York*, 136 Misc. 2d 892 [1987].

CASE NOTES

¶1. The Mollen Commission, established to investigate allegations of corruption and the effectiveness of police procedures, when investigating general conditions and making recommendations for reforming procedures, does not encroach on the Civilian Complaint Review Board since under Charter §440 the Board investigates specific complaints against individual members of the Police Department and recommends disciplinary measures. *Kelly v. Dinkins*, 155 Misc. 2d 787 [1993].

¶2. Police officers who testify before the Civilian Complaint Review Board (CCRB) are entitled to use immunity statements or information or evidence obtained from testimony not usable in subsequent criminal proceeding. Even though the City Charter does not specifically provide for use immunity, the right flows from the constitutional protection against self-incrimination. *Caruso v. Civilian Complaint Review Board*, 158 Misc.2d 909, 602 N.Y.S.2d 487 (Sup.Ct. New York Co. 1993).

¶3. The determinations as to whether a substantiated Civilian Complaint Review Board complaint should be expunged or retained, and if retained, whether it should be utilized in personnel decisions,

are policy matters within the Police Commissioner's discretion. Thus, CPLR Article 78 cannot be used to compel the Commissioner to exercise discretion in any particular manner. *Johnson v. Civilian Complaint Review Board*, 30 A.D.3d 201, 817 N.Y.S.2d 17 (1st Dept. 2006).

CONFIDENTIAL

Title 38-A: Civilian Complaint Review Board

Chapter 1: Rules of the Civilian Complaint Review Board

Subchapter A: Introduction

§ 1-01 Definitions.

As used in this chapter:

Agency Staff. The term "Agency Staff" means employees of the Civilian Complaint Review Board, including Board investigators.

Alleged Victim. The term "Alleged Victim" refers to the person alleging harm by the alleged police misconduct.

Case. The term "Case" refers to an investigation undertaken by the Civilian Complaint Review Board.

Chair. The term "Chair" means the Chair of the Civilian Complaint Review Board, appointed pursuant to New York City Charter § 440(b)(1).

Charges. The term "Charges" means charges and specifications brought by the Board against an officer with respect to an allegation falling within the jurisdiction of the Board and substantiated by the Board with the recommendation of charges and specifications.

Civilian Complaint Review Board. The term "Civilian Complaint Review Board" or "Board" means the entity established by Local Law No. 1 for the year 1993, codified as § 440 of the New York City Charter.

Complainant. The term "Complainant" refers to a person with Personal Knowledge of alleged police misconduct who is filing a complaint on behalf of themselves or another person regarding the alleged misconduct.

Executive Director. The term "Executive Director" means the chief executive officer of the Civilian Complaint Review Board, appointed pursuant to New York City Charter § 440(c)(5).

Full Board. The term "Full Board" refers to all current members of the Board who have been appointed, pursuant to New York City Charter § 440(b)(1).

Mediation. The term "Mediation" means an informal process, voluntarily agreed to by a Complainant and/or Alleged Victim and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

Personal Knowledge. The term "Personal Knowledge" means knowledge of a circumstance or fact gained through firsthand observation or experience.

Police Commissioner. The term "Police Commissioner" means the Police Commissioner of the New York City Police Department, and where appropriate, his or her designee.

Police Department. The term "Police Department" means the New York City Police Department.

Police Department Advocate. The term "Police Department Advocate" means the Department Advocate, and includes any Assistant Department Advocate of the Police Department.

Prosecution. The term "Prosecution" means the administrative prosecution of department Charges before a Trial Commissioner and includes all matters undertaken pursuant to such prosecution.

Reporting Non-Witness. The term "Reporting Non-Witness" refers to a person(s) without personal knowledge of the alleged police misconduct filing a complaint on behalf of another person.

Trial Commissioner. The term "Trial Commissioner" refers to the Deputy Commissioner of Trials or the Assistant Deputy Commissioner of Trials of the Police Department.

Victim. The term "Victim" refers to the person harmed by at least one or more substantiated allegation(s) of police misconduct.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-02 Jurisdiction.

(a) Pursuant to Chapter 18-A § 440 (c)(1) of the New York City Charter, the Board has the power to receive, investigate, hear, make findings and recommend action upon complaints by

members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.

(b) The jurisdiction of the Board includes the prosecution of certain substantiated civilian complaints pursuant to a Memorandum of Understanding (MOU) executed by the Board and the Police Department on April 2, 2012, (as from time to time amended) during the period that such MOU is in effect.

(c) The findings and recommendations of the Board, and the basis therefor, regarding Case investigations and administrative Prosecutions will be submitted to the Police Commissioner. (Amended City Record 1/2/2018, eff. 2/1/2018)

Subchapter B: Initial Procedures

§ 1-11 Filing Complaints.

(a) An Alleged Victim, a parent, legal guardian or legal representative if the Alleged Victim is a minor, or any individual having Personal Knowledge (as defined in 38-A RCNY § 1-01) of alleged misconduct by a member of the New York City Police Department, each have standing to file a complaint.

(b) Complaints of alleged police misconduct filed by Reporting Non-Witnesses (as defined in 38-A RCNY § 1-01) may be investigated at the discretion of the Executive Director or Chair of the Board. Among the factors to be considered are: the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within the time prescribed by the statute of limitations and the numbers of complaints received by the Board regarding the incident.

(c) The Board has the power to review incidents involving members of the New York City Police Department and investigate Cases arising therefrom within the Board's jurisdiction under the New York City Charter. (Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-12 Written Complaints.

Written complaints may be sent to the Board's offices by mail or email or may be submitted in person at that office during operating hours. Written complaints may be filed on forms furnished by the Board. The Board will accept written complaints filed at local precincts and forwarded by the Police Department. The Board will also accept complaints submitted through the CCRB's website and by such other methods as the Board may determine.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-13 Telephone or In-Person Complaints.

Telephone complaints will be received twenty-four hours a day, seven days a week by the Board. Complaints can be reported in person at the Board office during operating hours. Complaints may also be filed at public locations to be designated by the Board.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-14 Referrals of Complaints.

(a) Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another agency (and not that of the Board), the Chair or the Executive Director will refer such allegations to such other agency.

(b) Where the Board receives allegations about persons or matters falling partly within the sole jurisdiction of another agency (and not that of the Board) and partly within the joint jurisdiction of both the other agency and the Board, the Chair in consultation with the Executive Director may refer the entire complaint to the other agency if in the determination of Chair, in consultation with the Executive Director, it is appropriate for the entire complaint to be investigated by one single agency.

(c) The Board can investigate any complaint or allegation that falls within the Board's jurisdiction, regardless of whether another agency is investigating or has previously investigated the

same complaint or allegation.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-15 Late Complaints.

(a) When a complaint is filed with the Board after the 18-month statute of limitations has expired pursuant to Civil Service Law § 75(4), the Chair in consultation with the Executive Director will determine whether to investigate the complaint.

(b) When a complaint is filed with the Board more than one year after the incident, the Chair in consultation with the Executive Director will determine whether to investigate the complaint.

(c) Among the factors to be considered in determining whether to investigate complaints made after one year or after the 18-month statute of limitations has expired are: the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within any applicable limitation period, the reason for the late filing and the numbers of complaints received by the Board regarding the incident.

(Added City Record 1/2/2018, eff. 2/1/2018)

§ 1-16 Notification to the Police Department.

With respect to complaints about officers and matters within the Board's jurisdiction, the Board will notify the Police Department of the actions complained of within a reasonable period of time after receipt of the complaint.

(Amended City Record 1/2/2018, eff. 2/1/2018)

Subchapter C: Fact-finding Process

§ 1-21 Statement of Policy.

The procedures to be followed in investigating complaints will be such as in the opinion of the Full Board will best facilitate accurate, orderly and thorough fact-finding.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-22 Method of Investigation of Complaints.

In investigating a complaint, Agency Staff may utilize one or more of the methods set forth in this subchapter, and any other techniques not enumerated here, as may be allowed by law in conducting an investigation.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-23 Obtaining Documentary and Other Evidence.

(a) Board investigators may make written or oral requests for information or documents.

(b) Board investigators or, as provided in 38-A RCNY § 1-32(b), a panel established pursuant to 38-A RCNY § 1-31, may interview the Complainant, Alleged Victim, the subject officer, and/or witnesses.

(c) Board investigators may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of the members of the Full Board, subpoenas ad testificandum and duces tecum may be issued and served. Such subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.

(e) The Board may obtain records and other materials from the Police Department which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, investigators may request that the Board issue a subpoena duces tecum or a subpoena ad testificandum.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-24 Conduct of Interviews.

(a) It is the intent of these Rules not to alter the rights afforded to police officers by the Police Department Patrol Guide with respect to interviews in a manner that diminishes such rights, including but not limited to the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the Police Department who is the subject of a complaint will be given two business days notice prior to the date of an interview, to obtain and consult with counsel. A member of the Police Department who is a witness in an investigation of a complaint will be given a period of time, up to two business days, to confer with counsel.

(c) All persons interviewed may be accompanied by up to two representatives, including counsel. Such counsel or representative may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.

(d) Prior to the commencement of the interviewing of a police officer, the following statement will be read to such officer:

"You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

If you refuse to testify or to answer questions relating to the performance of your official duties, your refusal will be reported to the Police Commissioner and you will be subject to Police Department charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Police Department charges."

All interviewed police officers will also be informed prior to the commencement of an interview that under the New York City Police Department Patrol Guide, absent exceptional circumstances, an officer will be dismissed from the Police Department for intentionally making a false official statement that is material to the pending investigation.

(e) Interviews will be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling will be accommodated. If possible, an interview with a police officer will be scheduled when such officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(f) The interviewer will inform a member of the Police Department of the name and position of the person in charge of the investigation, the name and position of the interviewer, the identity of all persons present at the interview, whether the member is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and Complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

(g) The interviewer will not use off-the-record questions, offensive language or threats, or promise of reward for answering questions.

(h) The interviewer will regulate the duration of question periods with breaks for such purpose as meals, personal necessity and telephone calls. The interviewer must record all recesses.

(i) Interviews will be recorded by the Complaint Civilian Review Board. No other recordings are permitted.

(j) If a person participating in an interview needs an interpreter, a qualified interpreter will be obtained from an official registry of interpreters or another reliable source as soon as possible.

(k) When requested, reasonable accommodations will be made for persons with disabilities who are participating in an interview.

(l) Prior to the commencement of an interview of a Complainant, Alleged Victim and/or civilian witness, the following statement will be read to such person, in sum and substance:

At the start of the interview:

Today is [ENTER DATE] and the time is now [ENTER TIME]. I am Investigator [ENTER NAME] and I am conducting an official investigation into Civilian Complaint Review Board case number [ENTER CASE NUMBER]. In this case, an allegation of misconduct has been made against

(a) member(s) of the New York City Police Department.

This interview is taking place at [LOCATION], and is being recorded.

For the record, please state your name, address, date of birth, occupation/employer (if any) and/or student status.

Also present is/are [ENTER RECORD]

Mr./Ms. [ENTER NAME], you are being asked to provide a statement pursuant to an official CCRB investigation under the authority granted the CCRB pursuant to Section 440 of the New York City Charter. All statements made become part of the official investigative file and may be disclosed pursuant to subpoena or other document request to the extent permitted by law and in furtherance of criminal, administrative or civil litigation.

Please be advised that you will be asked to sign a verification statement at the conclusion of this interview verifying that all of the statements you have provided in connection with this investigation are true to your knowledge.

Mr./Ms. [ENTER NAME], do you understand what I have just told you?

At conclusion of interview:

Is there anything that I haven't asked you about that you wish to add to the record?

I am now going to present for your signature the verification form I mentioned earlier. This form requires your signature and reflects the fact that you have verified that the statements you have made in connection with this case are true to your knowledge.

Have the witness sign the form.

(Sign the form as a commissioner of deeds or have someone who is a commissioner of deeds present to witness the civilian's signature and sign the form as a commissioner of deeds).

The time is now [ENTER TIME].

The interview is now concluded.

(Amended City Record 1/2/2018, eff. 2/1/2018)

Subchapter D: Disposition of Cases

§ 1-31 Assignment of Cases.

(a) The Chair or the Executive Director will assign to a panel consisting of at least three Board members, or may assign to the Full Board for review, all Cases which have been fully investigated, and such other Cases or categories of Cases as the Board may determine by resolution.

(b) Pursuant to Chapter 18-A § 440(c)(2) of the New York City Charter, no panel will consist exclusively of members designated by the Council, Police Commissioner or selected by the Mayor. Panel membership will be determined by the Chair, but each panel will consist of at least one member designated by City Council, at least one designated by the Police Commissioner, and at least one designated by the Mayor; unless such a panel composition would interfere with or unreasonably delay the Civilian Complaint Review Board's operations. Panel membership will be rotated on a regular basis.

(c) If the Chair or the Executive Director determines that circumstances require it, the Chair or the Executive Director may reassign a Case to a new panel.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-32 Panel or Board Review of Cases.

(a) The panel or the Full Board will review the investigatory materials for each assigned Case, and report its findings and recommendations in writing.

(b) The panel or the Full Board may, if it deems appropriate, return a Case to investigative staff for further investigation. A panel may conduct additional fact-finding, including interviews, in accordance with the provisions of 38-A RCNY § 1-24.

(c) Panel findings and recommendations are deemed to be the findings and recommendations of the Board. However, upon request of a member of the panel, or upon the direction of the Chair at the request of any member of the Board, the Case will be referred to the Full Board for its consideration.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-33 Case Dispositions.

(a) Pursuant to Chapter 18-A § 440(c)(1) of the New York City Charter, no finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the sole basis for any such finding or recommendation.

(b) Panels or the Full Board will employ a "preponderance of the evidence" standard of proof in evaluating Cases.

(c) The findings and recommendations with respect to each Case reviewed by the Board will be submitted to the Police Commissioner.

(d) Where the disposition of one or more allegations is "Substantiated," as defined in Subdivision (e) of this section, the Board's findings and recommendations will be forwarded in writing to the Police Commissioner within five business days and include appropriate pedigree information regarding the subject officer, the Case number and any other control or serial number assigned to the Case, and a summary of the pertinent facts. Based on its findings, the Board may recommend penalties of Charges, command discipline or instructions with formalized training, or any combination of these. However, if the Board or panel recommends Charges for any Case allegation against a subject officer, all substantiated allegations against that officer will be included as part of that recommendation.

(e) The following categories of Case investigation dispositions will be used in reports to the Police Commissioner:

(1) Substantiated: there was a preponderance of evidence that the acts alleged occurred and constituted misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: there was a preponderance of the evidence that the acts alleged occurred but did not constitute misconduct.

(4) Unfounded: there was a preponderance of the evidence that the acts alleged did not occur.

(5) Complaint Withdrawn: the Complainant withdrew the complaint.

(6) Complainant Unavailable: the Complainant could not be reached or located.

(7) Alleged Victim Unavailable: the Alleged Victim could not be reached or located.

(8) Complainant Uncooperative: the participation of the Complainant was insufficient to enable the Board to conduct a full investigation.

(9) Alleged Victim Uncooperative: the participation of the Alleged Victim was insufficient to enable the Board to conduct a full investigation.

(10) Alleged Victim Unidentified: the Board could not identify the Alleged Victim and therefore was unable to conduct a full investigation.

(11) Officer Unidentified: the Board was unable to identify the officer who was the subject of the allegation.

(12) Referral: the complaint was referred to another agency.

(13) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(14) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(15) Mediation Attempted: the parties agreed to mediate the complaint but the civilian subsequently did not participate in the mediation.

(16) Miscellaneous: the subject of the complaint is not currently employed by the Police Department as a police officer.

(17) Administrative Closure: the Case was referred to the Board by another agency, not by a member of the public, and the Board was unable to conduct a full investigation.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-34 Cases Closed without a Full Investigation.

(a) The Full Board, a panel, or the Executive Director may close without conducting a full investigation any Case falling within categories (5) through (17) of 38-A RCNY § 1-33(e).

(b) No Case(s) falling within categories (5) through (17) of 38-A RCNY § 1-33(e) will be closed by the Executive Director until copies have first been provided to any member of the Full Board who has asked to review copies of said Case(s).

(c) The Executive Director must from time to time conduct an audit of Cases closed pursuant to this rule. After an audit of the aforementioned sample of Cases, the Executive Director will report his or her review of those Cases to the Full Board.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-35 Communications with and Notifications to Complainants, Alleged Victims, and Reporting Non-Witnesses Regarding Status of Complaints.

(a) Within seven business days of the receipt of a complaint, the Board will notify a Complainant, Alleged Victim, and/or Reporting Non-Witness by telephone or letter that the Civilian Complaint Review Board has received the complaint, and must identify the Case number and Agency Staff assigned to investigate the Case.

(b) The Civilian Complaint Review Board will, within seven business days of a final decision of the Board, write to the Complainant and/or Alleged Victim with such findings and recommendations.

(c) If an allegation is substantiated and Charges are recommended by a panel or the Full Board, the Civilian Complaint Review Board will, as soon as it is determined under 38-A RCNY § 1-42, advise the Complainant and/or Alleged Victim in writing whether such allegation will be prosecuted and, if it will, whether the Board or the Police Department Advocate will be responsible for prosecuting it.

(d) The Civilian Complaint Review Board will within seven business days of the Civilian Complaint Review Board's receipt of the Police Commissioner's final determination notify the Complainant and/or Alleged Victim by letter of the final action taken by the Police Commissioner.

§ 1-36 Reconsideration or Reopening of Cases.

(a) Upon receipt of a written request to reconsider or reopen a Case from a Complainant, Alleged Victim, Victim or subject police officer, a panel, Chair, or Executive Director may:

- (1) Reopen any Case previously closed without a full investigation; or
- (2) Agree to reconsider any Case previously closed with a full investigation if
 - i. New evidence becomes available which could reasonably lead to a different finding or recommendation in the Case; or
 - ii. A previously unavailable or uncooperative witness becomes available which could reasonably lead to a different finding or recommendation in the Case; or
 - iii. If reopening or reconsidering the Case serves the interests of justice.

(b) Upon receipt of a written request sent by the Police Department Advocate requesting the reconsideration of a previously fully investigated Case with panel findings and recommendations, a panel, the Chair, or the Full Board may agree to reconsider the penalty and/or disposition of an allegation if:

- (1) The penalty recommended for the Case by the deciding panel or Full Board against any subject officer is found by the deciding panel or Full Board to be inappropriate or excessive; or
- (2) There exists new facts or evidence that were not previously known by the deciding panel or Full Board which could reasonably lead to a different finding or recommendation in the Case; or
- (3) There are matters of fact or law which are found to have been overlooked or misapprehended by the deciding panel or Full Board or if reconsidering the case serves the interests of justice.

In considering requests from the Police Department Advocate, any such request must be made to the Chair, Executive Director, deciding panel, or Full Board, addressed to the Executive Director, within

30 days from receipt of the Civilian Complaint Review Board's initial findings and recommendations of a Case, absent good cause for any such delay beyond 30 days.

(c) The Full Board, Chair, a panel, or Executive Director considering a request to reopen or reconsider a Case will have full discretion in making a determination, and may properly consider all relevant circumstances, including, but not limited to: any delays on the part of the person requesting that the Case be reopened; new, material information as to the Complainant, Alleged Victim, Victim, the subject officer, or any civilian or police witness; and the practicability of conducting a full investigation of the allegations contained in the Case within any applicable limitation period.

(d) If a previously closed Case is reopened or reconsidered:

(1) If all members of the previously deciding panel are presently members of the Board, then that previously deciding panel will be reconvened to reconsider the Case.

(2) If any member of the previously deciding panel is no longer a member of the Board, then the remaining members of the previously deciding panel will be reconvened with a replacement panel member designated by the Chair as required by 38-A RCNY § 1-31(b) to reconsider the Case.

(3) If all members of the previously deciding panel are no longer members of the Board, the Chair will select a panel will be convened to reconsider the Case pursuant to 38-A RCNY § 1-32.

(Added City Record 1/2/2018, eff. 2/1/2018)

Subchapter E: Administrative Prosecution

§ 1-41 Introduction.

This Subchapter E is adopted pursuant to a Memorandum of Understanding (the "MOU") dated April 2, 2012, and made between the Police Commissioner and the Chair, concerning the administrative prosecution by the Board of Cases in which it finds that an allegation falling within its jurisdiction has been substantiated against an officer and recommends that formal Charges and specifications be brought against such officer. The MOU takes effect on the date on which this Subchapter E takes effect and applies to allegations substantiated by the Board and in which the Board has recommended that charges and specifications be preferred on or after such date. This Subchapter E does not create any rights or benefits in any third parties.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-42 Prosecution of Charges.

(a) Where the Board finds an allegation falling within its jurisdiction to have been substantiated against an officer and recommends that Charges be brought against such officer, the Board will promptly notify the Police Commissioner of its finding and recommendation.

(b) In those limited circumstances where the Police Commissioner determines that the Civilian Complaint Review Board's prosecution of the Charges would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify the Civilian Complaint Review Board. Such instances shall be limited to Cases in which there are parallel or related criminal investigations, or when, in the instance of an officer with no disciplinary history or prior substantiated Civilian Complaint Review Board complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

(c) Any request by the Police Commissioner for the Civilian Complaint Review Board to refrain from prosecution of Charges shall be made in writing to the Civilian Complaint Review Board and shall include a detailed explanation for such request and a statement detailing what discipline if any the Police Commissioner would pursue on such officer.

(d) The Civilian Complaint Review Board may reject such request to refrain from Prosecution within five business days of receipt of such request. Such rejection shall be made in writing and shall include a statement rebutting the Police Commissioner's explanation for his or her request.

(e) The Police Commissioner may deny such rejection within five business days of receipt of such rejection. Such denial shall be made in writing to the Civilian Complaint Review Board and

shall include a detailed response to the Civilian Complaint Review Board's rebuttal. Upon receipt of such denial the Board shall refrain from further Prosecution of the Case.

(f) In all Cases other than those in which the Board is refraining from prosecuting, the Civilian Complaint Review Board shall promptly draft, and request that the Police Department Advocate serve on behalf of the Board, Charges against the subject officer.

(g) If the Civilian Complaint Review Board, acting through the Chair or Executive Director, believes that suspension or modified assignment of a subject officer would be prudent while a Prosecution is pending, the Civilian Complaint Review Board, acting through the Chair or Executive Director, shall make such recommendation to the Police Commissioner, who shall determine whether to suspend or modify the assignment of such officer.

(h) After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director, or either of their designees, must make a formal request in writing to the deciding panel or, if necessary, the Full Board when:

(1) The Administrative Prosecution Unit is requesting that additional allegations be considered against a subject officer in addition to the allegations previously recommended by the Board; or

(2) The Administrative Prosecution Unit is requesting that previously considered allegations against a subject officer that did not previously result in a substantiation by the Board be reconsidered for substantiation.

In the formal written request, the Chief Prosecutor or Executive Director, or either of their designees, must detail their reasons for making said request. If the Full Board chooses to reopen the matter to add or reconsider any allegations, such matter will be reopened considering the same criteria designated in 38-A RCNY § 1-36(d). Where the Board decides to substantiate additional allegations, the Civilian Complaint Review Board will notify, in writing, all affected civilian and law enforcement parties of the changes to the allegation and/or Charges.

(i) After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director may, upon approval by either the Chair or Full Board, dismiss any Charges. When any such Charge is dismissed, the Civilian Complaint Review Board will notify, in writing, all affected civilian and law enforcement parties of the dismissal.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-43 Expedited Cases.

If the Civilian Complaint Review Board becomes aware that a Case requires expedited Prosecution, the Civilian Complaint Review Board shall make every reasonable effort to conclude such prosecution within the required time frame. If the Civilian Complaint Review Board determines that it will not be able to conclude such Prosecution within such time frame the Civilian Complaint Review Board will decline to prosecute such Case and request that the Police Department Advocate undertake such Prosecution.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-44 Other Misconduct.

If during the course of a Prosecution the Civilian Complaint Review Board becomes aware of possible misconduct falling outside its jurisdiction, such as the making of a false statement by an officer, the Board shall not itself prosecute such possible misconduct but shall instead immediately refer such possible misconduct to the Police Department for investigation and possible prosecution by the Police Department. The Civilian Complaint Review Board will provide to the Police Department such assistance as may be requested, in the investigation or Prosecution by the Police Department of such possible misconduct and shall, if necessary, coordinate its Prosecution with that of the Police Department. Other misconduct will be noted in case dispositions by categories describing the possible misconduct and the evidence of such misconduct.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-45 Police Department Procedures and Disciplinary Practices.

(a) The Police Commissioner retains in all respects the authority and discretion to make final disciplinary determinations.

(b) The Civilian Complaint Review Board will establish and maintain a unit of appropriately qualified and experienced attorneys and support staff of sufficient number to undertake in a timely and effective manner the responsibility of conducting Prosecutions.

(c) The Civilian Complaint Review Board's attorneys and support staff appointed pursuant to this section will be trained in all aspects of the Police Department's procedures and policies as they affect the Prosecutions.

(d) The Civilian Complaint Review Board's attorneys and support staff appointed pursuant to this section will, to the extent practicable and relevant, familiarize themselves with and apply in relation to Prosecutions, Police Department disciplinary policies and standards.

(e) The Police Department will provide all reasonable assistance requested by the Civilian Complaint Review Board in the creation and maintenance of this unit, including training and guidance in both legal and administrative matters.

(f) During the course of a Prosecution, the Civilian Complaint Review Board may contact the Police Department Advocate to request the assistance of employees of the Police Department in the evaluation, preparation and prosecution of the Case. In such instances, the Police Department Advocate shall arrange for the Police Department to provide reasonable assistance to the Civilian Complaint Review Board.

(g) In any Case substantiated by the Board in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Board or by the Trial Commissioner, the Police Commissioner will notify the Civilian Complaint Review Board, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification will be in writing and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Trial Commissioner's, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision. The Civilian Complaint Review Board and the subject officer may respond to such notification within five business days of its receipt, after which the Police Commissioner will make a final determination. (Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-46 Other Matters Relating to Administrative Prosecutions.

(a) The Police Department will upon receipt send to the Civilian Complaint Review Board a copy of each report and recommendation issued by the Trial Commissioner with respect of a Prosecution. The Civilian Complaint Review Board may provide to the Trial Commissioner a letter commenting on such report and recommendation, commonly referred to as a "Fogel" letter.

(b) Where a Prosecution ends without the issuance by the Trial Commissioner of a report and recommendation, the Civilian Complaint Review Board will forward to the Police Commissioner a final recommendation of the Civilian Complaint Review Board reflecting the results of its Prosecution of the Case. The Civilian Complaint Review Board will include all relevant forms, memoranda and background information to assist the Police Commissioner in making a final disciplinary determination.

(c) The Police Commissioner may accept, reject, or modify the recommendation presented by the Civilian Complaint Review Board, or may ask the Civilian Complaint Review Board for additional investigative or background information in its possession. The Police Commissioner may also request further investigation or development of the record to enable him or her to make a final disciplinary determination. If the Civilian Complaint Review Board's recommendation is rejected or modified, the Civilian Complaint Review Board will be responsible for taking any appropriate follow-up action, such as proceeding with the Prosecution, engaging in additional investigation, or further developing the record.

(d) The Civilian Complaint Review Board may conduct plea negotiations with subject officers and their attorneys, to be heard by a Trial Commissioner. The Police Commissioner will be informed of any proposed plea and said plea will be held in abeyance until approved by the Police Commissioner. In all Prosecutions in which the Police Commissioner rejects a negotiated plea, the Civilian Complaint Review Board will be responsible for implementing the Police Commissioner's decision, including further negotiating the Prosecution in a manner consistent with the Police

Commissioner's determination or proceeding with the Prosecution.

(e) The Civilian Complaint Review Board will provide to the Police Department quarterly status reports on its Prosecutions or as otherwise requested by the Police Department. Case substantiated by the Board in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Board or by the Trial Commissioner, the Police Commissioner will notify the Civilian Complaint Review Board, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification shall be in writing and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Trial Commissioner's, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision. The Civilian Complaint Review Board and the subject officer may respond to such notification within five business days of its receipt, after which the Police Commissioner shall make a final determination.

(f) The Police Department Advocate will ensure that the Civilian Complaint Review Board is notified of the final disciplinary result and specific penalty in each Case prosecuted by the Board within thirty calendar days of the Police Commissioner's final determination.
(Amended City Record 1/2/2018, eff. 2/1/2018)

Subchapter F: Mediation

§ 1-47 Mediation.

(a) A Complainant and/or Alleged Victim and the subject officer may choose to resolve a complaint by means of Mediation, unless the Board or a panel thereof determines that the complaint is not appropriate for mediation. The mediator will be designated by the Executive Director.

(b) A Reporting Non-Witness does not have standing to seek Mediation or refuse and prevent Mediation from proceeding. A Reporting Non-Witness who is a family member of an Alleged Victim may participate in Mediation whether the Alleged Victim participates or not.

(c) If one of the parties does not agree to Mediation, the complaint will be referred to Agency Staff for investigation.

(d) Written notice of the time, date and location of the first Mediation session must be provided to each party. Such notice will be accompanied by a description of procedures and guidelines for mediation. Subsequent session(s) will be scheduled by a member of the Board's mediation staff if the Mediation is not completed at the first session.

(e) Those present at the Mediation session must include the mediator and all parties who have consented to the Mediation. Where appropriate, arrangements will be made for a translator or interpreter to be present. In the case of a Complainant or Alleged Victim who is a minor, a parent or legal guardian must be present. Upon request, reasonable accommodations will be made for persons with disabilities who are participating in a Mediation. Parties' representatives or counsel may be available outside the room where the Mediation is being conducted.

(f) All information discussed or statements made at a Mediation session must be held in confidence by the mediator, and the parties must also agree in writing to maintain such confidentiality. No records of any kind, including, but not limited to, stenographic, video, or audio, may be made by any party.

(g) The Mediation session(s) will continue as long as the participants believe that progress is being made toward the resolution of the issues. The Mediation process may terminate if either party announces his or her unwillingness to continue Mediation, the mediator believes no progress is being made, or the Complainant fails to attend two or more Mediation sessions without good cause shown.

(h) If Mediation is successful, the parties may, but are not required to, sign an agreement stating that each believes the issues have been satisfactorily resolved. The Director of Mediation, or any Agency Staff designee will advise the Board when a Mediation is concluded and whether such Mediation was successful or unsuccessful. The Board will forward this information to the Police Commissioner.

(i) If a Case is not successfully resolved through Mediation, any party may ask for the complaint to be investigated, and the complaint will be referred to Agency Staff for investigation.

(Amended City Record 1/2/2018, eff. 2/1/2018)

Subchapter G: Board Meetings, Organization, and Delegated Authority

§ 1-51 Meetings of the Board.

(a) The Full Board must meet at least monthly, at which meeting it will consider Cases referred to it and conduct any other business.

(b) If a Case has been referred to the Full Board, the Full Board may take such action as it deems appropriate, including, but not limited to: making its own findings and recommendations, remanding the Case to a referring panel for further consideration or action, and remanding the Case for further investigation.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-52 Panel and Board Meetings: General Matters.

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a Case before a panel to which such member has been assigned, the member must disclose this situation to the Chair, and request that the Case be transferred to another panel. If a Board member has such relationship in a Case before the Full Board, the member should recuse themselves from deliberations or action in connection with that Case.

(b) Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-53 Authority given to the Executive Director.

(a) The authority given under these Rules to the Executive Director will:

(1) be exercisable either by the Executive Director or by such members of Agency Staff or members of the Board as the Executive Director may designate, and

(2) be subject to such limitations as the Board may determine by resolution.

(b) Consistent with the Charter mandate and without relinquishing its oversight authority, the Board authorizes the Executive Director, in consultation with the Chair, to manage all matters related to the appointment of Agency Staff, the organizational structure, and the day-to-day operations of the Civilian Complaint Review Board.

(Amended City Record 1/2/2018, eff. 2/1/2018)

§ 1-54 Committees and Subcommittees.

The Chair has the authority to create committees and/or subcommittees to assist the Board in fulfilling its responsibilities pursuant to law. The members of any such created committees and/or subcommittees will be chosen by the Chair and Executive Director, and will be chosen from the Board as well as Agency Staff, subject to review by the Full Board.

(Added City Record 1/2/2018, eff. 2/1/2018)

§ 1-55 Reconsideration or Reopening of Cases. [Repealed]

(Repealed City Record 1/2/2018, eff. 2/1/2018)

Chapter 1 Endnotes

ⁱ New York City Charter § 440(a).

ⁱⁱ New York City Charter § 440(b)(1).

ⁱⁱⁱ New York City Charter § 440(b)(1)-(2).

^{iv} New York City Charter § 440(c)(1).

^v New York City Charter § 440(c)(3).

^{vi} New York City Charter § 440(d)(1)-(3).

^{vii} New York City Charter § 440(c)(4).

^{viii} New York City Charter § 440(c)(6).

^{ix} New York City Charter § 440(c)(7).

^x New York City Charter § 440(a) (emphasis added).

^{xi} New York Civil Service Law § 75(4) (McKinney 1999).

^{xii} Based upon Montella v. Bratton, 93 N.Y.2d 424, 691 N.Y.S.2d 372 (1999), several different Office of Administrative Trials and Hearings judges have found that the state civil service law does not apply to disciplinary proceedings against New York City police officers. Under their analyses, the 18-month statute of limitation is inapplicable to such disciplinary proceedings. See e.g., Police Department v. Smith and Revels, OATH index nos. 345-346/01 (May 23, 2001), Police Department v. Salas, OATH index no. 1090/01 (Aug. 21, 2001), Police Department v. Medina and Redmond, OATH index nos. 862/01 and 1284/01 (Aug. 23, 2001). In these OATH decisions, judges found that because the New York Administrative Code does not contain a statute of limitations for bringing disciplinary charges against police officers, pursuant to the City Administrative Procedure Act charges would be barred only if the delay in bringing them was “unreasonable.” In each of these decisions, however, the judges held that even if the civil service law applied, there was an exception to the statute of limitations because the respondent committed a crime. Should the department impose discipline against an officer who committed no crime and who was served with charges more than 18 months after the date of occurrence it is currently unclear whether non-administrative courts will apply the state civil service law’s statute of limitations.

^{xiii} New York City Charter § 440(c)(2). See also Rules of the Civilian Complaint Review Board, subchapter D § 1-31.

Chapter Two: Locating Civilian Witnesses

Introduction

Locating civilian witnesses is a critical component of the investigator's job. Whether a complaint results in a full investigation, a mediation, or a truncated closure, the investigator will frequently have made extensive efforts to identify and locate civilian witnesses. With full investigations, interviewing as many witnesses as possible is essential to conducting thorough investigations and reach definitive conclusions about what occurred. It is particularly important to interview independent witnesses: witnesses who do not have a relationship to either the complainant/victim or the police officers and who have no perceived or actual stake in the outcome of the investigation.

In many cases, the investigator will learn of witnesses by interviewing other civilians and police officers. The chapter on interviewing details the information the investigator must obtain during interviews regarding the identity of and contact information for witnesses. This chapter details the sources of information, other than the interview, that should be utilized to identify and locate civilian witnesses.

The investigator will have to use information obtained from databases, police records, fieldwork and other sources to: 1) identify civilian witnesses and 2) obtain reliable contact information for them.

Review of Complaint Information

THE SOURCE OF THE COMPLAINT

It is imperative that the investigator review the source of the complaint (for example, the initial recorded call to the Intake Unit, the complainant's letter or e-mail, or the IAB log). The investigator should never rely solely upon the CCRB complaint report initially enclosed in the case file to identify witnesses and obtain contact information. The recorded telephone call, written correspondence, or IAB log may contain the names of and contact information for witnesses that are not reflected in the CCRB complaint report.

[REDACTED]

IAB LOG

When a complaint is reported to the Internal Affairs Bureau ("IAB"), the IAB Command Center will enter the complaint into their database, generate a log, and forward the log to the CCRB¹. In addition to reviewing the log to ascertain the names of subject or witness officers, the investigator should review the log for civilian witness names and contact information. As illustrated below, the excerpts from this log contain the name and address of the complainant, an explanation of her relationship to the alleged victim, and identifying information and present

whereabouts regarding the alleged victim. In addition, the location of the incident hints at where the investigator might find other witnesses.

In reviewing the IAB log, the investigator should double-check that the information from the log was accurately and thoroughly entered [REDACTED] [REDACTED]

[REDACTED] Investigators should correct the narrative section within the CTS to amend the above mentioned issues. However, the investigator should not add, subtract from, or otherwise alter the substantive narrative information obtained from the IAB log. One exception would be if the IAB command center intake recordings (subsequently obtained by the investigator following a records request) provided information that was inconsistent with, or missing from, the IAB log narrative. [REDACTED]

[REDACTED] Investigators can make corrections and/or updates to the civilian and officer information sections as the need arises throughout the life of an investigation.

IAB CALL-OUT DOCUMENTS

Sometimes IAB will conduct a preliminary investigation into the complaint before referring it to the CCRB. IAB refers to this preliminary investigation as a “call-out.” In such instances, IAB is supposed to forward documentation created and compiled in furtherance of its preliminary investigation to the CCRB. [REDACTED]

The investigator must prepare a records request to obtain all call-out materials and ensure that all relevant call-out materials, including the unusual occurrence memorandum prepared by a patrol supervisor who may be immediately dispatched to respond to the scene (prompting an update to the original IAB log) are received. The call-out materials will generally contain more detailed witness contact information, a recorded interview with the complainant/victim, police records, information for identifying the subject officers, and/or photographs. It is important to review these materials for witnesses’ names and contact information.

NYPD CIVILIAN COMPLAINT REPORT

When a complaint is filed at a police department command in-person or by telephone, the command must prepare a civilian complaint report, (a police department form). If the complaint is filed in person, the complainant will usually prepare an account of the incident in his/her own words. The receiving command is also required to interview the complainant, if the complainant is willing. The command is then required to notify CCRB (and IAB) about the new complaint and will forward the civilian complaint report to the CCRB and, under Patrol Guide procedure 207-31, is supposed to record on these reports any preliminary inquiry regarding the subject officer’s identity. Relevant precinct records should also be attached.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

On some reports, in addition to listing the complainant's name, date of birth, and address, the recording officer will indicate that the complainant was arrested and is on parole. Consequently, the investigator should determine whether the complainant is incarcerated. [REDACTED]

[REDACTED]

[REDACTED] In addition, the arrest report will obviously be a source of further information, which should be accessed immediately.

CONCURRENT IAB INVESTIGATIONS

When the CCRB receives a referral from IAB, the investigator should contact IAB to determine whether IAB is conducting a concurrent investigation. [REDACTED]

[REDACTED] In addition to the call-out documents, investigators can also request [REDACTED]

[REDACTED] IAB's case file, which will include additional civilian witness information, among other important materials that can be used to locate civilians. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Telephone and Address Directories

If the contact information for a witness is incomplete or unreliable, the investigator can utilize several directories at the CCRB to find the witnesses' addresses and telephone numbers. [REDACTED]

[REDACTED]

[REDACTED]

THE COLE DIRECTORY

Cole Directories are books that list associated addresses, occupants, and telephone numbers based on telephone company records. The agency has a directory for each of the five boroughs as well as for some outlying counties. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

WEBSITES

The investigator can also use websites to locate people and find contact information for them. These sites typically contain a selection of directories where the investigator can search by name, telephone number, or address, search engines for people, residences, and businesses, email directories, zip codes, area codes, maps, and driving directions. A few of the many sites are:

NYC Department of Corrections

Searching for Witnesses and their Contact Information Through On-Site Computer Databases

On-site computer databases, accessible from each investigator's desktop computer, are crucial to the identification of witnesses and to finding their addresses, telephone numbers, present whereabouts, and/or contact persons through whom they can be reached. The investigator can also use on-site databases to find out information about a particular address.

COMPLAINT TRACKING SYSTEM (“CTS”)

The CCRB's Complaint Tracking System contains information regarding all complainants, alleged victims, and witnesses in both open and closed CCRB cases. The investigator can determine whether any previous information exists within the CTS regarding a particular witness.

[REDACTED]

ELECTRONIC DOCUMENT MANAGEMENT SYSTEM (“EDMS”)

Similar to the CTS, the investigator can use the Electronic Document Management System (EDMS) to find information about a person from previous CCRB cases. After a case is closed, the case file is scanned into the EDMS, [REDACTED]

DEPARTMENT OF MOTOR VEHICLES (“DMV”) DATABASE

The investigator can access the New York State Department of Motor Vehicles database (DMV) to search, by name, for addresses contained in license and registration information. Though the DMV database does not contain telephone numbers, the investigator can use other methods described in this chapter to obtain an individual’s telephone number. [REDACTED]

The DMV database can also be used to find a witness if the investigator has a license plate number for a vehicle to which a witness is linked. [REDACTED]

[REDACTED] The investigator may conduct a search for license or registration information. [REDACTED]

Online Maps and Address Locating Services

The Geosupport Online Address Translator (“GOAT”) provides a great deal of information about New York City street addresses. It is useful for determining whether an address exists, what addresses exist between certain cross streets, and what precinct and zip code govern a specific address or intersection. It also can help determine what company or person owns a specific address.

Alternatively, an investigator can use the New York City Geographical Information System (GIS) map (<http://maps.nyc.gov/doitt/nycitymap/>), which provides similar information to GOAT but has the added benefit of providing a map to accompany this information and clickable neighboring buildings for addresses if only an intersection is known.

Google Maps (maps.google.com) is also a valuable resource that provides similar information as GOAT and NYC GIS, but has the added benefit of Street View, which allows users to access photographs of the location.

Issuing Subpoenas to Obtain Subscriber Information

To identify and locate witnesses, the investigator will at times have to acquire subscriber information for an address and/or telephone number from telephone companies. [REDACTED]

[REDACTED] The investigator should not issue subpoenas to telephone companies before attempting to identify witnesses and/or obtain contact information for them through on-site directories and databases.

CELLULAR TELEPHONE RECORDS

The investigator can subpoena cellular phone records in order to obtain the name of the subscriber for a specific telephone number. [REDACTED]

Once the cell phone to which the number belongs is identified, the investigator can issue a subpoena for the subscriber's billing information to the cellular telephone carrier. It is possible, although more difficult, to obtain the cellular telephone number for an identified witness.

Police Department Records

Police department records often provide reliable contact information for witnesses and identify witnesses of whom the investigator was previously unaware. Though there are innumerable police records and documents that the CCRB routinely obtains for its investigations, the records and documents discussed below are particularly relevant in order to find witnesses or obtain contact information for them. [REDACTED]

Police radio communication records: Event, Information, Summary, Chronology and tape-recording of 911 calls

With regard to identifying and locating witnesses, the Event, Summary, Information, Chronology and the CD recording of 911 calls may reflect the names, addresses, and telephone numbers of

individuals who called 911 to make a complaint or report an incident. The department's communication system also traces the origin of 911 calls using the Anonymous Name Indicator Anonymous Location Indicator ("ANIALI"), which will provide the telephone number, address of the relay tower that transmitted the call, and the name of the subscriber for the telephone number from which a 911 call originated.

On-line Booking System arrest worksheet ("OLBS")

When the police arrest an individual, the arresting officer will prepare by-hand an on-line booking system arrest worksheet ("OLBS"), upon which the arrest report is based. [REDACTED]

Criminal Complaint Report (UF-61)

Similar to the "complainant/victim" section of the arrest report, this document provides pedigree and contact information for crime victims and witnesses, who may also be witnesses to the incident under investigation by the CCRB.

Desk Appearance Ticket ("DAT") and DAT Investigation Report

If the police issued the defendant a desk appearance ticket ("DAT"), the investigator should request the DAT, the DAT investigation report, and the DAT Log. [REDACTED]

[REDACTED] The DAT investigation report lists the defendant's contact information as well as the name, address and telephone number of the contact person. [REDACTED]

Domestic Incident Report (DIR)

This report lists the name and other pedigree information for the parties of a domestic dispute and any children present for that dispute.

Command Log

Command log arrest entries will list the arrestee's name, sex, race, date of birth, and address, which the investigator may use to contact that person. [REDACTED]

The command log will also indicate the time the arrestee was brought to and left the precinct. This data can be used to determine whether an arrestee is a possible witness to an incident that occurred at the precinct. [REDACTED]

■

If the Emergency Medical Service (“EMS”) treated an injured prisoner, the command log may also note the EMS job number or attending emergency medical technician’s (“EMT”) shield number.

Prisoner Holding Pen Roster

The Prisoner Holding Pen roster lists the arrestees lodged in male or female precinct holding cells. Like the command log, the roster can help identify possible witnesses to an incident that occurred in the holding cells or at the precinct, as it lists the time each prisoner was in the holding cells. It may also identify the subject officers as the officer who lodged or check on each prisoner is listed.

Stop and Frisk Report (“UF 250”) and log

The stop and frisk report lists the name, address, and other pedigree information of the civilian whom the police stopped and frisked, unless the civilian stopped refused to provide such information. ■
■■
■

The Police Department no longer keeps a database of names that are captured by the UF250. Consequently, the investigator will have to make requests from MAS by referencing the address and/or time and date, and/or officer tax identification number, and/or precinct of occurrence. MAS will provide the investigator with a print-out of the digital UF250 report and/or UF250 log.
■■■■
■■■■
■■■■
■■■■
■■■■

Summons

When an officer issues a summons, the officer will detail the name, address and other pedigree information of the individual to whom the summons is issued. If the investigator needs to contact another individual—a possible witness—who was issued a summons at the same time, he/she can request the summonses immediately preceding and following the summons issued to the complainant/victim. ■
■■
■■
■■
■■

■■■■ The investigator can also contact the IAB Liaison Unit who can look up the summons number, and provide the investigator with the identity of the subject officer, as well as contact and pedigree information regarding the individual to whom the summons was issued.

Memo book entries

In his/her memo book, an officer may list the name of and contact information for an individual whom the police aided or stopped and frisked, who is the victim or perpetrator of a crime, or who witnessed a police interaction with a civilian. The officer might include this information in the chronological log of entries, or on the "fly" sheet, (the reverse blank side of a memo book page). [REDACTED]

Complaint follow-up and complaint follow-up informational ("DD5")

Detectives usually prepare these reports as part of their investigation into a crime. They draft these reports following a canvass for witnesses or after interviewing witnesses. Thus, these reports can serve both as witness statements as well as a source of contact information.

Unusual Occurrence Report ("UF 49")

This report is prepared when an out-of-the-ordinary incident occurs such as a homicide, a police shooting, a police mobilization, or an incident involving an off-duty police officer. This report generally lists all civilian and officer witnesses to an incident and summarizes their statements. In addition, this report lists the other police documents prepared in connection with the incident.

Motor Vehicle Accident Index and Report

The index and report identify the motorists and vehicles involved in a vehicular accident. If the incident at issue stems from a motor vehicle accident, the index and report are good sources for identifying witnesses and obtaining contact information for them.

Aided Index and Report

An aided report is prepared anytime an officer assists an injured individual (other than an individual who was arrested), including another police officer. The aided report will include the aided individual's name, pedigree, and contact information, the shield number of the responding ambulance paramedic, the name of the hospital to which the aided person was taken, or whether the person refused medical attention. [REDACTED]

Emergency Service Report

An ESU report is generated anytime ESU responds to a location or is involved in a police action. The ESU Report will include information regarding which unit of ESU was involved, what action was taken, what information they had, and why they were called. It can also include pertinent information regarding the time, place, and occurrence which can lead to the further identification of any potential witnesses.

Juvenile Report

The NYPD considers juveniles to be youths at least seven years of age, but less than sixteen. If a juvenile, fifteen years or younger, is accused of a crime, a juvenile report will be prepared. These reports, similar to arrest reports, will contain pedigree and contact information for the juvenile who has been arrested. The arresting officer should be in possession of the juvenile report, however they are also kept at the Youth Services Section of the relevant precinct.

Line-of-Duty ("LOD") Injury Witness Statement

The line-of-duty injury witness statement is prepared when an officer witnesses another officer injured while on duty. The line-of-duty injury witness statement contains the witness' account of the circumstances leading to the officer's injury. The witness statement is stored with the line-of-duty injury report. [REDACTED]

OCCB Buy Report

The OCCB buy report is prepared by the undercover officer who purchased narcotics. The buy report provides the descriptions of the individuals involved in the transaction, the ghosting officers, the arresting officer, the circumstances leading to the transaction, and the location of the transaction and the post-arrest identification.

Witnesses Who Are Criminal Defendants

The investigator will occasionally have to locate witnesses who have been arrested and charged with a crime. Some of these witnesses, or defendants, have open criminal cases for which they are required to periodically appear in court. Some of them are incarcerated because they cannot make bail, or because a judge has remanded them without bail, while criminal charges are pending against them. And some of these witnesses have been sentenced to jail or prison. This section discusses the resources the investigator has to locate witnesses who have open criminal cases or who are serving sentences in New York City jails or New York State prisons.

OFFICE OF COURT ADMINISTRATION COMPUTER SYSTEM

The Office of Court Administration ("OCA") computer system is a state database, derived from public court records, which includes information on New York criminal cases. The investigator should use the OCA system to find out the status of open and closed criminal cases. This information can help the investigator ascertain whether the CCRB witness, a criminal defendant, is incarcerated. The OCA system also contains information from which the investigator can ascertain when a witness/defendant, who is not incarcerated, is scheduled to appear in court, a safe location where investigators have succeeded in meeting a hard-to-find witnesses. In addition, the OCA database lists the name of the defendant's attorney and the assigned assistant district attorney, both of whom can be sources for additional information about the case and the

witness/defendant.

[REDACTED]

[REDACTED]

LOCATING INCARCERATED WITNESSES

The investigator should check to determine if the witness is incarcerated. If a witness is incarcerated in NYC, it is incumbent upon the investigator to travel to the facility in which the witness is housed to interview the witness or conduct an interview by telephone or video conference. Before conducting an interview with an witness who is incarcerated as a result of the incident that the CCRB is investigating, it is imperative that the investigator contact the inmates attorney.

[REDACTED]

[REDACTED]

Homeless Witnesses

In some cases, the investigator will have to conduct a canvass of the area(s) where the homeless witness frequents or sleeps. The investigator can attempt to find the witness through the New York City shelter system, though the Department of Homeless Services often refuses to provide detailed information because of privacy concerns. To locate a homeless witness, the investigator should contact as many different units of the Department of Homeless Services as is helpful with the witness' name, date of birth, and if possible, a social security number.

The investigator can obtain general information from the Department of Homeless Services. The CTS Telephone Directory lists multiple contacts for the Department of Homeless Services, which is updated on a regular basis.

The investigator may also contact shelters directly, although if the facility is a substance abuse treatment center, it cannot provide any information (even to confirm or deny whether someone is a resident) because of statutes protecting residents' privacy. Oftentimes, if the investigator does find the shelter where a witness is residing, the investigator may only be able to leave a message for the witness.

City Employees

CCRB investigators will frequently have to identify witnesses who work for New York City or other public authorities. The investigator will then have to make arrangements to interview these public servants. This section provides information from which the investigator can identify and interview these witnesses. Generally, the investigator will have to contact the respective agency's legal department and issue a subpoena for the witness to appear at the CCRB. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The addresses or telephone numbers listed in this section may change. With respect to the police department, the investigator should refer to the department's Organization Guide and official roster (telephone directory). With respect to other public agencies, the investigator should utilize the Green Book, the official directory of the city of New York, to call the agencies' legal unit, inspector general's office, or other relevant department.

Civilian employees of the NYPD: school safety agents, traffic enforcement agents, and principal administrative aides

To follow-up on these subpoenas, the investigator can call the FDNY court and legal desk.

Metropolitan Transit Authority New York City Transit employees

With respect to any effort to identify railroad clerks (token booth clerks), subway operators and conductors, and subway custodians, the investigator should have as much information as possible, including the date and time of the incident, the train number or letter and direction, or the subway station booth number. [REDACTED]

[REDACTED] The investigator should speak to the employee in advance to help determine whether the employee was a witness and whether scheduling an interview is necessary.

To identify and schedule subway operators and conductors, the investigator should contact the MTA Legal Department [REDACTED].

To identify and schedule a bus driver, ticket clerk, or cleaner, the investigator should contact the MTA's Legal Department support unit. [REDACTED]

Ultimately, the investigator will have to send the Litigation Support Unit a subpoena for the bus driver, once that driver is identified.

New York City Department of Correction: New York City Correction Officers

To identify and/or schedule a New York City correction officer, the investigator can fax a subpoena to and can contact the Department of Correction Legal Division. If the Legal Division needs help in identifying a correction officer, it will contact the Department's Inspector General's Office.

New York City Department of Sanitation Employees

To identify and interview Department of Sanitation employees, the investigator should contact the Department of Sanitation's Legal Affairs division. That division will likely request a written request for information via fax, followed by a subpoena for the employees. Investigators can fax subpoenas to the Department of Sanitation.

Canvasses

Depending upon the circumstances of the incident, conducting a canvass—traveling to the location of occurrence and asking individuals if they witnessed the incident—can be an excellent way to identify independent witnesses. [REDACTED]

[REDACTED] The sooner the investigator canvasses the location, the better. If possible, the investigator should conduct the canvass at the same time of day or night that the incident occurred. [REDACTED]

Before going to the location, the investigator should become familiar with the area via Google Maps Street View and determine the exact buildings/apartments to be canvassed. The investigator should take into account the demographics of the area; among the investigators who conduct the canvass there should be at least one who can speak the same language as those individuals who inhabit the neighborhood. If the investigator expects to canvass a large area or buildings with many apartments, he/she should assemble a small group of investigators for assistance. The investigator should bring with him/her:

- Pens/pencils
- Cellphone
- a legal pad or a notebook
- a battery operated digital recorder and extra batteries
- interview materials (civilian witness interview script, verification forms, police officer identification aids, confidential witness information sheets—bring the Spanish equivalents if applicable)
- copies of relevant case documents
- a camera
- agency identification
- business cards
- CCRB pamphlets (English and Spanish)
- canvass letters and envelopes
- a withdrawal letter
- Global Positioning Satellite (GPS)
- Any necessary subpoenas to be issued.

If the investigator enters businesses to find witnesses, the investigator should wait until the employee(s) is available, introduce themselves, explain the CCRB, and ask to speak to the manager or supervisor. The investigator should state his/her purpose, ascertain who was working at the time of the incident, and ask to speak with those employees. If the persons who were working are not present, the investigator should obtain contact information for those employees. If the manager is not present, the investigator should also obtain contact information for the manager, who may be able to identify the correct employees. If patrons of the business may be witnesses, and an employee approves, the investigator should post a canvass letter on a window, door, or bulletin board in the business. As the investigator conducts his/her inquiries, the investigator should always ask for the name of the person to whom he/she is speaking. If the business is closed at the time of the canvass, the investigator should make a note of its hours of operation, if posted, so that there is a record of whether the business was open at the time of occurrence. The investigator should also leave a canvass letter or business card under the door or in the doorframe.

For residences, if the investigator is canvassing a neighborhood of homes, he/she should ring the doorbell and wait outside. When a person comes to the door, the investigator should introduce him/herself, state his/her purpose, and determine who lives at the location and who was home at the time of the incident. The investigator should then ascertain if one or more residents have any information about the incident. If no one answers, the investigator should leave a canvass letter

in the mailbox or underneath the front door. When canvassing an apartment building, the investigator should attempt to gain entry and then walk from door to door inside the premises. If no one answers from inside an apartment, the investigator should leave a canvass letter underneath the door. If entry cannot be gained into an apartment building, a canvassing letter should be posted in the mailbox/vestibule area.

[REDACTED]

[REDACTED] When collecting video evidence in the field, it is imperative that the investigator make notation of the full name and contact information of the person from which the video came in order to establish a chain of custody in subsequent proceedings.

VIDEO EVIDENCE

Video evidence is often times a pivotal piece of evidence and time-sensitive. This being the case, one of the first steps an investigator should take is the collection of video evidence. Video evidence can be obtained from many sources, from a civilian's cell phone, to city-owned surveillance cameras, to a storefront shop's security camera.

Obtaining Video from City-Owned Sources

Various city agencies and departments regularly possess and maintain video surveillance systems. The most common city-owned sources that video evidence can be gathered from are: NYCHA, TARU, MTA, and Viper.

NYCHA

Many NYCHA developments have both exterior and interior video cameras. A list of these cameras can be found on the Investigative Drive. However, as this list constantly changes and is dependent upon NYCHA's own internal processes, it is advisable to subpoena all video footage from any NYCHA building where an incident occurred. NYCHA requires that subpoenas be hand-delivered to their legal office. The address and contact information can be found in the CTS' Telephone Directory. The amount of time that NYCHA holds these videos prior to deleting them can vary. Investigators can call the technical services division (see the Telephone Directory) and request that the video be held until the subpoena is processed. While the technical services division is not required to hold video, often times the division will hold onto it if it still exists, pending the completion of the processing of the subpoena.

TARU

TARU, which is a video surveillance command within the NYPD, also operates numerous cameras at intersections throughout the city (a complete list can be found on the Investigative Drive). TARU video can be requested through an IAB Request. A telephone call should be made to TARU (see the Telephone Directory) to ask that the video be pulled for the investigation. Be sure to include the "EBN Number" which is located on the TARU list found on the Investigative Drive.

MTA

MTA Video can be obtained by a subpoena sent to the Law Department. There is no reliable list of cameras in the MTA system, and it is advisable to always subpoena video from any subway station where an incident occurred. If video does not exist, MTA should respond to the subpoena with a letter that states as much. The subpoena can be faxed or emailed in advance so that the MTA holds the video while they wait for the subpoena to be processed [REDACTED]

Viper

Viper is a unit of the NYPD that operates cameras inside of NYCHA buildings. These cameras are monitored by officers from the Viper Unit. Often these video are not recorded, but at times, these videos can be. To determine if Viper cameras are present at a NYCHA facility, investigators should call the PSA that covers that facility [REDACTED]. Once it is determined that Viper cameras exist, the investigator should speak with IAB or MAS to determine how best to obtain this video.

Obtaining Video from Non-City-Owned Sources

Obtaining video evidence can be crucial to an investigation. Video obtained in the field generally comes from two sources: cell phones and security cameras.

If a civilian has cell phone video, the investigator should arrange to transfer it from the civilian's cell phone to the investigator's computer via email, computer cables, or Bluetooth. [REDACTED]

If it appears that buildings in the area may have security cameras that would have captured the incident, the investigator should contact the business or management company of the residential building and determine the process for obtaining the video and whether a subpoena is needed. It is also important to find out whether video still exists, as retention periods for security systems can be as short as 24 to 48 hours and as long as 90 days, depending on the establishment.

If the investigator cannot reach the business or locate a management company, the investigator should conduct fieldwork as soon as possible and look to speak to the manager/owner of a business or the superintendent of a residential building. [REDACTED]

[REDACTED] The investigator should also generate a subpoena for any business or residential building, which should be provided to the manager/owner/superintendent if requested.

The investigator can also seek out the Field Team for their assistance.

ⁱ The investigator can submit a request to IAB to obtain a copy of the recorded telephone call to the IAB command center.

CONFIDENTIAL

CONFIDENTIAL

Chapter Three: Mediation Program

Importance of Mediation

New York City Charter, chapter 18-A, § 440(c)(4) requires that the board establish a mediation program. Mediation offers complainants and subject officers an opportunity to constructively resolve the dispute which led to the filing of the complaint. During a mediation session, which occurs in the presence of a trained mediator, both complainants and subject police officers have an opportunity to express their feelings, needs, and concerns to each other in an informal, confidential, and neutral setting, without fear of intimidation. A successful mediation occurs when both parties agree that the issues raised by the complaint have been resolved. Mediation provides perhaps the best opportunity for the CCRB to improve police-community relations on a one-to-one level. A successful mediation will frequently result in the police officer being more sensitive to the concerns of the citizenry and the civilian having a greater understanding of the reasons for police conduct.

The number of cases that are mediated depends directly on the number of cases the investigative staff refers to the Mediation Unit. It is therefore the responsibility of the investigative staff to identify cases that are mediatable and to discuss intelligently and persuasively with complainants what mediation entails and how it can benefit the complainant. Ultimately, it is the investigator who will offer the complainant the opportunity to mediate. As a result, the success of the agency's mediation program substantially hinges upon the work of the investigative staff.

Overview of the Process that Precedes the Mediation of Cases

Before a case can be mediated, a number of procedural requirements must be met. The investigator should have an understanding of the overall process when discussing mediation with complainants or alleged victims (this chapter will use the term "complainant" to refer to both complainants and alleged victims).

STEP ONE: THE INVESTIGATIVE STAFF REFERS SUITABLE CASES TO THE MEDIATION UNIT

As will be discussed in detail later in this chapter, the investigator must identify cases that are suitable for mediation, interview the complainant by telephone or in person, and offer the complainant the opportunity to mediate his/her complaint. If the complainant chooses to mediate the complaint and the subject officer(s) is/are correctly identified, the investigator's squad then refers the case to the Mediation Unit.

STEP TWO: MEDIATION UNIT REVIEWS CASE

Cases transferred to the Mediation Unit will be reviewed to ensure that they meet the **basic criteria for mediation (e.g., the case is suitable or, if unsuitable, there is an applicable exception, subject officer(s) have been sufficiently identified, all appropriate parties have been offered mediation and have either accepted or declined to participate; mediation was accurately presented to the parties)**. The mediation coordinator assigned to the case will read the entire case file, [REDACTED]

[REDACTED] After review, cases will generally be accepted, rejected or returned for further work. After a case is accepted for mediation, the complainant will be contacted to inform him/her of the mediation approval process.

STEP THREE: MEDIATION UNIT FORWARDS THE NAME OF THE SUBJECT OFFICER TO THE NYPD

After the Mediation Unit reviews, accepts, and begins to process a case for mediation, it will forward the tax number of the subject officer(s) to the police department's Department Advocate's Office (DAO). The role of the DAO is to examine all aspects of the officer's personnel history and determine whether the officer is an acceptable candidate for mediation.

STEP FOUR: SUBJECT OFFICER IS OFFERED THE OPTION TO MEDIATE

If the DAO agrees that a subject officer is an acceptable candidate for mediation, the subject officer's commanding officer must offer the option to mediate to the subject officer and discuss the CCRB's mediation program with the subject officer. [REDACTED]

[REDACTED] If the subject officer refuses to mediate, the case will be returned to the Investigations Unit.

STEP FIVE: SCHEDULING AND CONDUCTING THE MEDIATION SESSION

If the officer agrees to mediate, the Mediation Unit will attempt to schedule a mediation session. If the complainant fails to respond to telephone calls and letters or fails to appear twice without good cause for a scheduled mediation, the Mediation Unit will submit the case to the ADR Committee with the recommendation that the case be closed as "mediation attempted." This disposition gives the subject officer the same benefit as if the case was mediated successfully. If the mediation is not successful (which happens in approximately 10% of mediated cases), the complainant can choose whether he/she wants to proceed with a full investigation. If the complainant does not want to pursue a full investigation, the case will be closed as "mediation attempted." If the mediation is successful, the case will be closed as "mediated."

Identifying Cases That Are Suitable for Mediation

The board has the discretion to determine which cases should be considered for mediation and has established certain guidelines. In 2014, the board determined that all cases, regardless of the nature of

the allegations therein, are eligible for mediation. However, while a case may be eligible for mediation, based on a number of different factors a case may ultimately be determined by the investigative staff, the executive staff, the board, the Mediation Unit, or the DAO, to be unsuitable for mediation. It is the investigator's job to identify all cases to which he/she is assigned that are suitable for mediation. As discussed below, if there are questions about whether a particular case is suitable for mediation, the investigator and his/her supervisors should discuss the case with Mediation Unit staff.

CASES THAT MAY NOT BE SUITABLE FOR MEDIATION

Although all cases are eligible for mediation, some cases may not be suitable for mediation. There are six factors which may render a case unsuitable for mediation. However, as discussed more fully below, there are exceptions which can make cases that involve these factors suitable. These factors are:

Arrests

Complaints that arise out of arrests are not typically suitable for mediation. There are certain factors that will enable the investigator to refer the case to the Mediation Unit. For example, although a civilian may be technically under arrest when brought to the precinct in handcuffs, if the civilian is ultimately released with a summons or a Desk Appearance Ticket (DAT) in place of the arrest, the case is suitable for mediation. If the underlying arrest has been resolved (e.g., charges dismissed), the case will be suitable. Complaints that arise from behavior tangential to an arrest may also be suitable for mediation. For example, a mother whose son was arrested may complain about the desk officer's behavior when she tried to get information about her son's whereabouts.

Property Damage/Personal Injury Allegations

Cases where the complainant alleges that a civilian sustained an injury or that the subject officer(s) damaged a civilian's property are not typically suitable for mediation. However, in some cases an exception can be made. First, the investigator needs to ascertain the following information from the complainant.

- Does the complainant feel that the property damage/injury was minor?
- Is the property damage/injury the main focus of the complaint?
- Is the civilian planning on filing a lawsuit?

If the civilian gives the appropriate responses to all of the above questions (i.e., *Yes*, the property damage/injury was minor. *No*, the damage/injury is not the main focus of the lawsuit. *No*, the civilian is not planning on filing a lawsuit) the case can be referred to the Mediation Unit.

Concurrent IAB Investigation

If there is a concurrent IAB investigation regarding the complaint, the case is not suitable for mediation.

Other

This is a catch-all category for cases that may be otherwise suitable but for some reason not discussed here, the case should not be referred for mediation. For example, if the complainant cannot give a consistent, coherent recitation about the situation underlying the complaint or cannot follow directions or answer questions appropriately, that case may not be suitable for mediation. [REDACTED]

Making an Assessment

The investigator makes a preliminary assessment regarding the suitability of the complaint. If any of the above factors are present, the investigator then assesses the factor to determine whether an exception can be made to render the case suitable for mediation. The investigator should not make the ultimate determination that a case is unsuitable for mediation on his/her own. The investigator must consult with his/her supervision (and, if appropriate, the Mediation Unit) before a final determination is made. [REDACTED]

Investigators should be continually assessing their cases to see if the circumstances rendering a case unsuitable have changed, which would allow the case to be referred to the Mediation Unit. For example, if the unsuitability factor was an arrest, has the arrest been adjudicated or, if the unsuitability factor was a lawsuit, has the complainant decided not to file the lawsuit. If, in such a case, a complainant is still interested in participating in mediation, the case can be referred to the Mediation Unit.

TRACKING SYSTEM SUITABLE CASES

Upon receipt of a new case, the investigator must review the complaint information and update and/or revise the information in CTS regarding that complaint [REDACTED]

[REDACTED] With respect to the mediation process, it is imperative that the investigator update or revise, as needed, the allegations, the reported injuries, whether the complainant/victim was arrested, and the subject officer's identifying information and the complainant's pedigree information.

"Mediation offered" checkbox

[REDACTED] Once this box is checked, the investigator will be prompted to indicate whether the complainant accepted or rejected the opportunity to mediate his/her complaint.

"Complaint unsuitable for mediation" checkbox

[REDACTED] the investigator will then have to indicate from a drop-down menu the reason for unsuitability. [REDACTED]

When Mediation Should be Offered

AGE OF CASE

While it is preferable that cases be referred to the Mediation Unit as soon as possible, there is no deadline by which the investigator must refer the case to the Mediation Unit. When the investigator and his/her supervisor believe that the age of the complaint may render the case unsuitable for mediation, the investigator and his/her supervisors should first discuss the case with the Mediation Unit staff.

REQUIREMENT THAT INVESTIGATORS OFFER MEDIATION WHEN A CASE IS SUITABLE

When cases are suitable for mediation, it is a requirement that investigators discuss mediation with the complainant/victim and offer the opportunity to mediate his/her complaint. In short, investigators are not free to decide to conduct an investigation rather than offer the complainant an opportunity to mediate the complaint.

TO WHOM MEDIATION SHOULD BE OFFERED

Mediation must be offered to every available/cooperative complainant and victim in the case. In addition, mediation can be offered to a non-witnessing complainant if that complainant is related to the victim, e.g., a mother who files a complaint on behalf of a son. In such a case, the victim does not have to (but may) participate. Mediation should not be offered to witnesses. As discussed below, witnesses are not permitted into the mediation room.

TELEPHONE OR IN-PERSON INTERVIEWS

When telephone interviews will suffice

Interviewing the complainant by telephone in mediation suitable cases may alleviate the need for the complainant to travel to the CCRB twice, may increase the number of cases in which mediation is offered and accepted, and may increase the number of cases ultimately mediated. The agency believes that these benefits generally outweigh the inconvenience of having to schedule an in-person interview should the Mediation Unit have to return the case to the investigator.

A case can be referred to the Mediation Unit based solely on a telephone interview if the following three conditions are met: 1) the investigator obtains a sufficiently detailed narrative of the incident underlying the complaint; 2) all appropriate parties have agreed to mediation (or have not asked for an investigation); 3) the subject officer(s) is reliably identified. If these conditions are not met, the investigator should conduct an in-person interview.

When an in-person interview is suggested

After a case has been accepted by the Mediation Unit, the investigator may schedule an in-person interview. The investigator should notify the Mediation Unit of the interview date and the case will be returned to the investigator for purposes of the interview. After the interview has taken place, the case is to be returned to the Mediation Unit.

When in-person interviews are required

When the subject officer(s) cannot be reliably identified through police documents obtained in-house, the investigator should schedule an in-person interview with the complainant.

Insufficient facts to determine whether the case is suitable for mediation

When the investigator is unable to obtain the facts he/she needs by conducting a telephone interview with the complainant to determine whether the case is suitable for mediation, the investigator should schedule an in-person interview.

IDENTIFYING OFFICERS

As discussed in the chapter on identifying officers, there are a number of steps that should be taken to identify subject officers. These steps include interviewing possible subject officers and having civilian witnesses view photographs of them. That a complainant has agreed to mediate his/her complaint should not delay the normal investigative process of identifying officers. The investigator should interview possible subject officers as soon as possible. During those interviews, however, investigators should **not** discuss mediation with the officers or the union representatives. Should an officer or a union representative have a question regarding mediation, the investigator should find a member of the ADR staff to speak with them.

Offering the Complainant the Opportunity to Mediate**OUTLINE FOR PRESENTING COMPLAINANT WITH OPTIONS
OF MEDIATING OR INVESTIGATING COMPLAINT**

At the outset, in discussing the mediation and investigative processes, the investigator should understand that there is nothing wrong with conveying accurate, factual information to civilians, whether that information involves substantiation rates, NYPD disciplinary rates, or the benefits a mediation outcome provides to the complainant. [REDACTED]

[REDACTED]

[REDACTED]

Ask the complainant what he/she wants from the complaint process

To effectively discuss with the complainant the mediation process, it is important to find out what the complainant is seeking from the complaint process. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Finding out what the complainant wants will logically lead to a discussion of the complainant's options.

Describe the complainant's options

Once a decision has been made to offer the complainant the opportunity to mediate his/her complaint, the investigator should advise the complainant that he/she has two options to resolve the complaint: mediation or investigation. Though the agency is interested in persuading complainants to choose mediation if their goals are compatible with the mediation process, the investigator should avoid diminishing either the investigative or mediation process.

Description of mediation process

In describing the mediation process to the civilian, the investigator, at a minimum, should include the following information:

- Mediation involves sitting in a private, secure room at the CCRB with the officer(s) and a trained, neutral mediator.
- Both the complainant and the officer(s) must voluntarily agree to participate in mediation.
- The mediator's job is to facilitate discussion between the complainant and the officer(s). The mediators don't decide who is right or who is wrong.
- Mediation is a non-disciplinary process.
- The mediator will generally ask the complainant to describe what happened and how he/she feels about it; the officer then gets to respond and a discussion ensues.
- The complainant and the officer(s) are free to speak their minds: the complainant can explain how angry or upset he/she felt, can ask the officer(s) for an explanation of the officer's actions, and will have the opportunity to ask for an apology.
- If the mediation is not working, the complainant or the officer(s) can stop it at any time. It is then up to the complainant what happens next. The complainant can decide to have the complaint investigated or, if the complainant chooses not to proceed any further, the complaint will be closed as mediation attempted.
- The complaint is successfully mediated when both the complainant and the officer(s) agree that the issues raised by the complaint and the incident have been resolved.
- The most important thing that the complainant can get out of mediating his/her complaint is satisfaction. Mediation gives the complainant the opportunity to speak with the officer(s), educate the officer(s), empower him/herself by controlling how the complaint is resolved, and enhances the chances that the complainant will be satisfied.
- More than 90% of the mediations the CCRB conducts are successful.
- The overwhelming majority of complainants who participate in mediation are satisfied with the process.

Description of investigative process (if requested by complainant)

The investigator should provide the complainant with a complete explanation of the investigative process. Here are the points the investigator, at a minimum, should include, when describing what an investigation involves:

- The investigator will conduct interviews of the complainant, civilian witnesses, and police officers.
- The investigator will obtain relevant documentary evidence, e.g., police records.
- The investigator will report his/her findings to the board.
- The board will review the investigative report and attempt to determine what occurred.

- The board decides whether misconduct occurred.
- If the board finds that the officer(s) committed misconduct, it will make a disciplinary recommendation.
- The police commissioner ultimately makes the decision about what, if any, discipline is imposed against the officer(s).

ADDITIONAL INFORMATION ABOUT THE MEDIATION PROGRAM

Who can be present at the mediation

The mediator, the victim, the complainant and the subject officer(s) are present at the mediation. If required, a translator will also be present. Non-witnessing complainants may participate in mediation only if he/she is related to the victim. Witnesses, attorneys, or representatives may come to the CCRB but must wait outside the mediation room unless the mediator requires their participation. If the complainant/victim is under seventeen years-old, he/she must be accompanied by a parent or guardian.

Confidentiality

All information disclosed or statements made at a mediation session will be kept confidential and cannot be disclosed or used as evidence, or in any other way, in any judicial or administrative proceeding. Everyone in the mediation room will be required to sign a confidentiality agreement before a mediation can begin.

RESPONDING TO COMMON REASONS CIVILIANS PROVIDE WHEN HESITANT TO MEDIATE

The complainant should never feel as if he/she is being forced to accept mediation. Voluntary participation is essential to conducting a successful mediation. However, there are a number of facts and arguments the investigator can utilize in attempting to persuade the complainant that mediation might be the preferable process.

The complainant wants the officer punished

A good way to respond to the civilian who insists that he/she wants the officer punished or fired is to ask the civilian how he/she might feel if the impartial and thorough investigation does not result in discipline. To successfully mediate a case, by contrast, indicates that both parties agree that the issues raised by the complainant have been resolved. [REDACTED]

[REDACTED]

[REDACTED]

The complainant does not want to see the officer again

When the complainant does not want to see the officer again, the investigator should emphasize that the dynamics that existed during the complainant's encounter with the officer are not replicated in the mediation. The mediation session offers the complainant the rare opportunity to be on a level playing field with the officer: the officer cannot resort to threats and cannot issue a summons or arrest the complainant. The mediation session takes place at the CCRB, a safe and secure environment. The complainant will not be alone with the officer; a neutral mediator will be present. [REDACTED]

[REDACTED]

[REDACTED]

The complainant wants the officer to know the officer was wrong

The investigator should inform this complainant that mediation is an effective forum for telling the officer that the officer was wrong. Communicating this message in-person may be more effective than if communicated, for example, by the officer's commanding officer, who may not have all the facts. Meeting with the officer in-person puts a human face on the impact the officer's conduct has had. If the case is mediated, the complainant will have the opportunity to attempt to educate the officer. If the CCRB investigates the complaint, there is no guarantee that this will occur. [REDACTED]

[REDACTED]

[REDACTED]

**OTHER SUGGESTIONS FOR DEALING WITH COMPLAINANTS RELUCTANT TO
MEDIATE**

When the complaint arises out of an ongoing dispute

If the complaint arose out of an ongoing dispute, the investigator should stress that the mediation may resolve the long-standing dispute and enable the complainant to improve his/her relationship with an officer with whom he/she has ongoing contact.

When the subject officer(s) patrol the precinct in which the complainant lives

If the complaint occurred in the precinct in which the complainant resides and the subject officer is assigned to that precinct, the investigator can tell the complainant that mediation may resolve the complaint and enable the complainant to put the case behind him/her in a way that improves his/her relationship with the officers who patrol his/her precinct.

Have the Mediation Unit staff speak to the complainant

If the complainant has questions about the mediation process that the investigator cannot answer, or wants time to decide whether to accept mediation, **the investigator should advise the complainant that the agency's Mediation Unit staff can more expertly answer the complainant/victim's questions and discuss mediation with the complainant/victim. The investigator should provide the complainant/victim with the Mediation Unit director's name and telephone number.** The investigator should also advise the complainant/victim that a Mediation Unit staff member may contact the complainant/victim to discuss mediation. If the complainant is present at the CCRB, the investigator should attempt to have the Mediation Unit director or one of its staff members speak to the complainant while the complaint is still present at the CCRB.

Following the telephone or in-person interview during which the complainant still has questions about mediation or wants time to consider mediation, the investigator should bring the case to the Mediation Unit director; the Mediation Unit director or a staff member will subsequently attempt to contact and speak with the complainant.

Re-offering mediation to a complainant who has previously refused to accept it

If, after the interview is concluded the complaint is still suitable for mediation, the investigator should re-offer the complainant the opportunity to mediate his/her complaint.

WHAT TO TELL THE COMPLAINANT WHO AGREES TO MEDIATE

Referral to the Mediation Unit

If the subject officer(s) is identified, the investigator should explain to the complainant that his/her case will be referred to the agency's Mediation Unit and that a staff member from that unit will contact the complainant. If the officer(s) is not identified, the investigator should explain that before the case can be transferred to the Mediation Unit, the investigator will have to identify the subject officer(s).

Approval process

The investigator should mention that before a case can be mediated certain protocols must be met. For example, the officer must also agree to mediate. If asked, the investigator can explain the approval process in detail: 1) the Mediation Unit must determine that the case is suitable for mediation (this should already have been determined in most cases); 2) the NYPD must determine that the subject officer's personnel history makes him/her a suitable candidate for mediation; 3) the subject officer(s) must voluntarily agree to participate.

Submitting the Case to the Mediation Unit

Mediation Referral Report

Once the complainant has agreed to mediate the case and the subject officer(s) has been identified, the investigator will have to draft a report using the mediation referral report template. [REDACTED]

Document Requests

Since the mediation procedural process includes the possibility that cases will be returned to the Investigations Unit, the investigator should request all relevant and necessary records from the police department or other sources prior to submitting the case to the Mediation Unit. Upon receipt of the records, the investigator should ensure that the records are included in the case file, even if the case is still on the Mediation Unit's docket.

DIRECT ANY QUESTIONS ABOUT MEDIATION SUITABILITY OR OFFICER IDENTIFICATION FOR MEDIATION ACCEPTED CASES TO THE DIRECTOR OF MEDIATION OR STAFF FROM THE MEDIATION UNIT.

CONFIDENTIAL

Chapter Four: Interviewing Civilians and Police Officers

Introduction

Interviewing civilians and police officers is the most important and sensitive aspect of conducting CCRB investigations. Interviewing witnesses (civilians and police officers) is the primary investigative method utilized by the CCRB. The main purposes of interviewing witnesses are to obtain a detailed account of the incident from a particular witness' perspective, obtain from the witness other information relevant to his/her credibility, and to uncover the identity of all civilian and police officer witnesses. Failure to obtain detailed information during interviews will leave the investigator without the ability to make appropriate decisions about future investigative steps and the ability to determine what happened. In short, in order to conduct thorough and detailed investigations, investigators must conduct thorough and detailed interviews.

CCRB Rules Governing the Conduct of Interviews

The New York City Civilian Complaint Review Board came into existence as an agency independent of the police department on July 5, 1993. Soon thereafter, the board promulgated rules governing the procedure by which complaints can be filed, the investigative process, board review of investigations, and other matters. With respect to the rules governing the investigative, or fact-finding process, the board also enacted specific rules governing the conduct of interviews. These rules, known as the Rules of the CCRB, can be found in the appendix of this manual's first chapter. While the board has adopted other policies (discussed in this chapter) governing certain aspects of the interviewing process since 1993, the board has not subsequently formally incorporated these newer policies into the Rules of the CCRB.

Subchapter C, sections 1-24(a)-(k), of the CCRB rules sets forth the procedures by which interviews are to be conducted. Subsections (a), (b), (d), and (f) deal specifically with interviewing police officers and are discussed in detail in the section of this chapter entitled "Interviewing Police Officers—Special Issues." Subsections (c), (e), and (g)-(k), which govern the interviews of both civilians and police officers, are set forth below:

- (c) All persons interviewed may be accompanied by up to two representatives, including counsel. Such counsel or representative may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.
- (e) Interviews shall be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling shall be accommodated. If possible, an interview with a police officer shall be scheduled when such

officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(g) The interviewer shall not use off-the-record questions, offensive language or threats, or promises of reward for answering questions.

(h) The interviewer shall regulate the duration of question periods, with breaks for such purposes as meals, personal necessity, and telephone calls. The interviewer shall record all recesses.

(i) Interviews shall be recorded digitally.

(j) If a person participating in an interview needs an interpreter, he or she shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview. A qualified interpreter will be obtained from an official registry of interpreters or another reliable source.

(k) Reasonable accommodations shall be made for persons with disabilities who are participating in an interview. Persons requiring such accommodations shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview.

Preparing for the Interview

Meticulous preparation is essential to conducting quality interviews. Such preparation consists of two primary components, one procedural and the second substantive. First, it is a prerequisite that the investigator be prepared to conduct interviews by having all necessary material at-hand for use during the interview. It is vital that the investigator be organized and knowledgeable of applicable interviewing procedures. Being professional and prepared will engender the respect of those whom are interviewed. Secondly, investigators must fully familiarize themselves with the contents of the investigative case file before conducting the interview. Given time constraints, the investigator should attempt to obtain the maximum amount of information possible before conducting the interview. The investigator should also consider what issues are raised by the investigation before conducting the interview.

SCHEDULING POLICE OFFICERS

The investigator should be aware of some of the factors to consider when deciding whether to schedule multiple police officers for a single incident on the same day or on different days. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Regardless of which scheduling strategy the investigator adopts for particular cases, the investigator should routinely ask the officer whether and when the officer has conferred with other officers about the incident in question.

GETTING ORGANIZED: MATERIALS NECESSARY FOR CONDUCTING THE INTERVIEW

Civilian witness interview binder/folder

The investigator should compile forms and materials commonly utilized when conducting interviews with civilian witnesses. The investigator should package these forms and materials in a folder or a binder with pocket pages that the investigator should bring to every interview he/she conducts with a civilian witness. The binder or folder should contain the following material:

Rules of the CCRB regarding the conduct of interviews

The investigator should copy § 1-24 of the Rule of the CCRB (found in the chapter 1 appendix) and bring these rules to each and every civilian witness interview. Having the rules with the investigator allows him/her to be prepared if the witness or the witness' representative challenges the procedures by which the CCRB conducts interviews. For example, the rules dictate that the interview be recorded, a process to which some witnesses and their representatives object.

CCRB brochures

Civilian witnesses may not have a good understanding of the investigative process or the powers and authority of the CCRB. At every interview with a civilian witness, the investigator should provide to the witness a CCRB pamphlet (in the appropriate language, if possible).

Business cards

The investigator should provide to every civilian witness whom he/she interviews a business card with the correct telephone number at which the investigator can be reached.

Confidential witness information sheet

As discussed more fully below, before commencing the formal interview, the investigator must obtain contact information from each civilian witness he/she interviews. The investigator records this information in the confidential witness information sheet and ultimately in the CTS database and the interview report.

Civilian witness interview script

Copies of the civilian witness interview script should be brought to every civilian witness interview.

Police officer identification aid form

Identification of the subject officer is an element of every allegation of misconduct. Even in cases in which the witness interviewed volunteers the name or shield number or tax identification number of the officer(s), the investigator should still obtain other identifying information pertaining to the subject officer(s) and other officers involved. The police officer identification aid form is a means by which investigators can refer to a checklist of necessary identifying information and is a place where investigators can easily note the responses of the witness. The investigator must ultimately include this information in the interview report.

Medical release form

In cases where the witness obtained medical treatment for injuries allegedly sustained as a result of the incident at issue, it is necessary for the investigator to obtain the relevant medical records. In order to obtain these records, which are ordinarily privileged, the investigator must obtain from the witness a release form (also known as a “HIPAA” release form) for each and every entity (clinic, private doctor, hospital, and/or ambulance service) that treated the witness. By signing the release, the witness gives up his/her doctor-patient privilege and, with a subpoena duces tecum, the investigator can obtain the necessary medical records.

Verification form

The statute authorizing the creation of the CCRB, New York City Charter, chapter 18-A, § 440(c)(1), states that “[t]he findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement”

To ensure that witness statements are sworn statements, the investigator must notify the witness in advance of questioning that the investigator will ask the witness to sign a verification form swearing that his/her statements are true. Following the conclusion of the interview, the investigator must present the verification form for the witness’ signature and contemporaneously sign it, as a commissioner of deeds. Thus, investigators must bring a verification form to every civilian witness interview.

Mediation materials

During the course of the interview with the complainant, the investigator may determine that the complaint is eligible for mediation and should offer the complainant the opportunity to have his/her case mediated. Thus, the investigator should have at-hand the pamphlet describing the mediation program.

Police officer witness binder/folder

The investigator should also compile forms and other procedures, as described below, frequently utilized when conducting interviews with police officers. The investigator should package these forms in a folder that the investigator should bring to every interview he/she conducts with a police officer. The folder should contain the following material:

Rules of the CCRB regarding the conduct of interviews

The investigator should copy § 1-24 of the Rules of the CCRB (found in the chapter 1 appendix)

and bring these rules to each and every police officer interview. As mentioned above and discussed more fully below, four CCRB rules—§ 1-24(a), (b), (d), and (f)—pertain specifically to interviews with police officers. The investigator must be familiar with these rules and ready to refer to the rules upon being challenged by an officer or the officer's representative. The investigator must also be prepared to read to the police officer the CCRB policy statement (§ 1-24(d)) regarding the rights of officers being questioned by the CCRB. In dealing with a representative who is interfering with the conduct of the interview, it can be helpful, for example, to point out that CCRB rule § 1-24(c) states that the witness' counsel or representatives "may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding."

Patrol Guide procedure 211-14—Investigations by the Civilian Complaint Review Board

Under Patrol Guide procedure 211-14, officers must appear before and respond to questions posed by CCRB investigators. The procedure discusses the officer's rights and obligations while at CCRB, specifies that an officer who fails to answer questions truthfully and fully can face disciplinary action, and provides for immediate suspension should an officer refuse to answer an appropriately posed question. Although this is a departmental procedure the investigator is under no obligation to read to the officer, the investigator should bring it to every police officer interview, be familiar with it, and be prepared to refer to it if necessary.

Patrol Guide procedure 206-13—Interrogation of members of the service

Although Patrol Guide procedure 206-13 is a departmental procedure governing interrogation of officers by the department, CCRB rule § 1-24(a) incorporates this procedure by stating that the CCRB rules do not alter the rights afforded to police officers by the police department Patrol Guide with respect to interviews. While the investigator is under no obligation to read this Patrol Guide procedure to the officer (since it is the department's policy), the investigator should bring a copy of this procedure to every police officer interview, be familiar with it, and be prepared to refer to it if necessary.

Patrol Guide procedure 203-08—Making false statements

Patrol Guide procedure 203-08 (as revised by interim order 4/2005) sets forth the department's policy regarding officers who make false official statements. In the view of the department, making false statements to the CCRB constitutes a false official statement. Before questioning the officer at CCRB, the investigator routinely makes sure that the officer is aware of this police department policy. While the investigator is under no obligation to read this Patrol Guide procedure to the officer (since it is the department's policy), the investigator should bring a copy of this procedure to every police officer interview, be familiar with it, and be prepared to refer to it if necessary.

Police officer interview script

Copies of the police officer interview script should be brought to every police officer interview.

Medical release form

In cases where the police officer obtained medical treatment for injuries allegedly sustained as a result of the incident at issue, it is necessary for the investigator to obtain these medical records. In order to obtain these records, which are ordinarily privileged, the investigator must obtain from the police officer a release form (HIPAA release form) for each and every entity (clinic, private doctor, hospital, and/or ambulance service) that treated the officer. By signing the release, the officer gives up his/her doctor-patient privilege and, with a subpoena duces tecum, the investigator can obtain the necessary medical records. Thus, the investigator should include copies of medical release forms in his/her police officer interview folder.

Other materials

Investigative case file

Obviously the investigator must bring to any interview the investigative case file. When in the field, the investigator should bring photocopies of any needed case file materials to guard against losing documents that cannot be easily replaced. No original material should ever be taken out of the office.

Aside from simply bringing the case file to the interview, the investigator should organize the file so that it can be readily utilized during the interview. Should the investigator expect to show a witness certain documents and/or photographs, for example, these documents and/or photographs should be extracted from the file or tabbed so that the investigator does not have to fumble for material that is needed.

Pens, notepad, watch, digital recorder

The investigator should always have at every interview a pad upon which to take notes, a sufficient number of pens and pencils, a watch to record the start and conclusion of the interview and the time of any recesses, and a digital recording device. Before commencing the interview, the investigator always should check that the recording device is sufficiently powered and in good working order. Witness signatures on verification forms and medical release forms should be written with a pen, not a pencil.

KNOWING THE CASE BEFORE CONDUCTING THE INTERVIEW

Witness' prior statements and entire case file

No matter the stage in the investigation, it is essential to be knowledgeable about every relevant aspect of the investigative case file before conducting an interview. When interviewing a particular witness, it is crucial that the investigator be familiar with that witness' prior statements, including statements contained in police reports, 911 calls, police radio communications, as well as prior statements made to the CCRB or police department investigators. **Should the witness provide relevant information that contradicts a prior statement, it is the obligation of the investigator to address the inconsistency with the witness and determine if the witness has an explanation for the inconsistency** (more on this topic will follow below).

Even when conducting the initial interview of the complainant/victim, which occurs when the investigator has the least information about the case, it is incumbent upon the investigator to listen to any applicable telephone complaint and/or read any correspondence that forms the basis of the complaint. In fact, this is the first step the investigator should take upon being assigned to a new case. The investigator should also scrutinize any paperwork prepared by IAB and forwarded to the CCRB, e.g., logs and interview reports. [REDACTED]

Aside from the specific witness' prior statements, it is crucial to be familiar with the evidence in the investigative case file in order to question the witness. For example, where the investigator is interviewing officers in a force case, it is critical to know the time, date and place of the alleged victim's medical treatment and the specific injuries that victim sustained. In such a situation, the

investigator will eventually need to incorporate these facts in questions designed to permit the officer to explain how specific injuries occurred.

Documentary evidence to which the CCRB has direct access

Because it is so important to interview civilians and police officers as soon after the incident as possible, in many cases the investigator will not have an opportunity to review documentary evidence that will ultimately be obtained from the police department, medical facilities, or other sources. However, it is extremely important to take advantage of all the documentary evidence to which the CCRB does have access before conducting the interview, if possible. For example, at the CCRB offices, CCRB investigators have access to:

Booking, arraignment, disposition system (BADS)

Upon receiving a case, the investigator should immediately access relevant arrest reports.

Office of Court Administration (OCA) system

CCRB investigators should determine the current status of criminal charges by accessing the Office of Court Administration (OCA) computer system.

Aided report system

Through the aided report system, the investigator can obtain information regarding the injuries sustained by a civilian and officer as well as the extent of treatment, including the identity of paramedic and/or hospital. The investigator can also determine the identity of the aiding officer.

Motor vehicle accident index

In a case involving a motor vehicle accident, the investigator can obtain the accident report number and the names and addresses of the individuals who operated the vehicles involved.

Complaint report (UF 61) system

Through the UF 61 system, the investigator can obtain a narrative of the crime complained of, crime victim and witness information, and suspect information.

Police and 911 radio communications

Within two years of the occurrence, the investigator can obtain copies of the SPRINT printout regarding 911 calls and police radio jobs.

Automated roll call system (ARCs)

Within 30 days (and possibly a few days more) of the date of occurrence, the investigator can obtain finalized precinct roll calls for the 76 city precincts and the 9 police service areas (PSAs).

Vehicle database

Excluding cars assigned to the Organized Crime Control Bureau (OCCB), which includes narcotics, the investigator can obtain information regarding the assignment of vehicles based upon plate numbers, NYPD number, make and color.

CCRB complaint tracking system (CTS)

The investigator has access to the CCRB's own complaint tracking system, through which he/she can check as appropriate any witness' prior complaint and interview history, if any.

Department of Motor Vehicles (DMV) database

The investigator has access to the DMV database, through which he/she can access driving records including moving violation summonses, license information, and vehicle registration information.

Geographical area where the incident took place-using diagrams and maps in interviews

Even before visiting the location of an incident and taking photographs or making a diagram if appropriate, the investigator can familiarize him/herself with the geographical area where the incident took place. The investigator should examine a map, magnify and copy it, and bring the copies of the map to the interviews he/she conducts for the case. For each witness, the investigator should prepare a different map so that any notations an individual witness makes do not influence another witness. During the course of the interview, the investigator should have the witness sign and date the map or diagram if the witness makes notations on it. When a witness makes notations on an existing map or makes a new map or diagram, these are considered part of the witness's statement and they **MUST** be preserved. [REDACTED]

[REDACTED] The investigator should not redraw diagrams drawn by the witness. Using a map can help the investigator visualize what the witness says and can help the witness illustrate to the investigator where the conduct allegedly occurred. Even if the investigator personally visits the location of the incident, the investigator should utilize at interviews a map, diagram, and/or photographs in order to permit witnesses to more specifically and easily describe the incident.

Anticipating the issues raised by the complainant

The success of any interview is largely dependent on the investigator's knowledge of the evidence and ability to identify the allegations and issues raised by the complainant. Anticipating the issues raised by the complainant enables the investigator to visualize and plan, to some extent, the areas the investigator must cover in his/her questioning. Once the investigator considers the specific allegations and other issues raised by the complainant, it is absolutely critical that the investigator think about what information he/she must obtain in order to determine what happened and resolve these allegations and issues.

For example, if identification is at issue, the investigator will know in advance to spend significant time questioning civilian witnesses to obtain information pertaining to officers' physical characteristics and clothing and if appropriate, can ask officers to describe the civilians whom they saw and/or with whom they interacted. Other issues will dictate that the investigator research in advance of the interview the Patrol Guide procedure(s) and/or legal standards that are applicable to the case. In a stop and frisk case, for instance, in advance of the interview the investigator should research the applicable Patrol Guide procedure and legal standards as discussed in New York Search & Seizure. For stop and frisk cases, the applicable procedure and legal standards mean that the investigator should ask the civilian extensive questions about his/her clothing, the manner in which the clothing was worn, and what if anything could have caused a bulge. In turn, the investigator will know to ask the officer questions concerning the description, if any, the officer received from the dispatcher, the congruity, if any, between the location described and the location where the officer saw the civilian, how much time elapsed between the time of the call and the time the officer saw the civilian, the civilian's appearance, the specific conduct of the civilian, the officer's opportunity for making observations, and the officer's reasons for believing the civilian had a weapon.

Gathering information when scheduling the interview

Scheduling an in-person interview with a civilian generally is done by telephone. When calling a witness to schedule an in-person interview, the investigator should take the opportunity to obtain additional contact information from the witness and obtain a brief narrative and/or other details (e.g., the identity of other witnesses) from the witness to the extent necessary in each case, in order to prepare for the in-person interview.

Upon speaking to a witness the investigator is scheduling for an interview, the investigator should determine if the civilian possesses photographs of the location of the incident and/or photographs he/she believes show injuries and/or damage to property. The investigator should also determine if the witness possesses court documents, summonses, police records, notes and/or letters. To the extent that such documentary evidence does not exist or is not in the witness' possession but can be obtained, the investigator should encourage the witness to take such photographs or gather the relevant documentary evidence. The investigator should tell the witness to bring all such documentary evidence with him/her to the interview location. In addition, the investigator should request that the witness bring other relevant witnesses to the interview location.

Telephone calls to witnesses of the incident at issue should be recorded in accordance with the agency policy described later in this manual. [REDACTED]

Planning for the interview itself

Once the investigator has thoroughly reviewed the investigative file, obtained all documentary evidence to which the CCRB has direct access, familiarized him/herself with the geographic area where the incident took place, anticipated the issues raised by the complainant, and researched applicable Patrol Guide procedures and/or legal standards, the investigator should outline the areas he/she intends to cover in the interview. Outlining specific areas the investigator wants to question the witness about is not the same as writing out question-by-question what the investigator intends to ask the witness. The investigator who writes out his/her questions has a tendency to stick to these planned questions and ignore new areas of inquiry that become apparent during the interview itself. It is more important to list topics, even very specific topics, about which the investigator wants to question the witness. It can also be helpful to list certain facts the investigator wants to have at his/her fingertips. As the investigator grows in his/her ability to formulate questions, the investigator will have greater confidence in his/her ability to ask questions without relying on a script.

Documentary evidence in the witness' possession

Police officers are required to bring to CCRB interviews their memo book or daily activity report for the day and incident in question; they frequently also bring relevant summonses and police reports. The officers must make copies of the memo book entries for the date(s) of the incident(s) for which s/he is testifying. The investigator must obtain the copies of the officer's memo book entries prior to the beginning of the interview. Prior to beginning the substantive interview, the investigator should determine whether the witness has brought with him/her other documentary evidence pertaining to

the case. Examining this evidence **before** beginning the substantive questioning will enhance the investigator's knowledge of the case and will usually serve as the basis for additional questions. The investigator should make notes on his/her topic list if appropriate, so that he/she does not forget to ask questions about something raised by the new material.

Before the interview, the investigator should copy all such documentary evidence brought by the witness to the interview. Material that appears irrelevant at the time of the interview may in fact turn out to be relevant later on.

It is recommended that the investigator attempt to obtain from the civilian the original documents, particularly original photographs, rather than copy or scan such material. The investigator must determine who took the photographs and when the photographs were taken, and so indicate in the investigative file.

Meeting and Speaking to the Witness — What to do before Asking Substantive Questions

IMPORTANCE OF BEING A CCRB INVESTIGATOR

The competence and professionalism of the investigator who interviews the witness largely create the image that a civilian or police witness forms of the CCRB. It is essential that the investigator present him/herself professionally to the witness; the investigator should be polite, accord the witness with respect, appear understanding yet impartial, appear interested in what the witness says, and be familiar with CCRB procedures, informative about the CCRB investigative process, and substantively prepared to conduct the interview.

WITNESS' REPRESENTATIVES AND/OR ATTORNEYS

Though CCRB rule section 1-24 states that a person interviewed may be accompanied by up to two representatives, including counsel, it is the policy of the agency that witnesses should be interviewed separately. That is to say, should two friends who are both witnesses to the incident appear at CCRB for interviews, the investigator should interview the friends separately.

Should a witness be accompanied by a representative at an interview, the investigator should inform the witness and the representative(s) beforehand that CCRB rules permit the representative to advise the witness but prohibit the representative from participating in the interview. The investigator should also inform the witness and the representative that the investigator will note on the record the times when the representative consults with and/or advises the witness.

If a representative during the course of the interview insists on interjecting, so that the representative is having a detrimental effect on the integrity of the interview, the investigator should take a recess and speak to the representative outside the interview room. The investigator should reiterate that CCRB's rules prohibit the representative from testifying or asking questions during the

interview.

INTRODUCING YOURSELF TO THE CIVILIAN WITNESS

Unless the witness is a child, the investigator should address the witness as Mr. or Ms. The investigator should provide his/her full name to the witness, escort the witness to an interview room, and make sure that the witness is aware that the CCRB is an agency comprised of civilians that is independent of the police department. The following is a suggested method of introduction:

Q: Mr. John Public?

A: Yes.

Q: Hi. I am Jane Doe. I am the investigator who has been assigned to your case. Please come with me to the interview room.

A: Okay.

Q: Have you had a chance to read the brochure that was in the waiting area describing the authority of the CCRB?

A: No.

Q: Well, here is a brochure describing the CCRB. You should know that the CCRB is an agency that employs only civilians and is independent of the police department. The CCRB's job is to objectively investigate complaints made against New York City police officers. I will describe the investigative process and what can result from a CCRB complaint in more detail after the interview, but will answer any questions you have about the CCRB now, if you would like.

OBTAINING CONTACT INFORMATION FROM THE CIVILIAN WITNESS

Before beginning the substantive interview and turning on the recording device, the investigator must obtain from the civilian witness the contact and statistical information specified in the confidential witness information sheet under "personal," "employment" and/or "school," "family and/or other contacts," "attorney" (if appropriate), and "future plans." The sheet's purpose is to provide a checklist of information the investigator should obtain from the witness and to provide an easy place upon which to note such information. The investigator should ask the witness questions from the sheet, and the investigator should fill out the form. This helps set the tone for the rest of the interview.

The investigator should advise the witness that the purpose in asking the questions to obtain the information required by the confidential witness information sheet is threefold: 1) the CCRB may have to contact the witness in the future; 2) if the complaint is substantiated, the prosecutor may need to contact the witness in the future; and 3) some of the information the CCRB uses for statistical reports that it is required to publish. Should a witness refuse to provide specific information, the investigator should simply move on and note in the interview report that the

witness refused to provide that information.

The investigator should exercise discretion in asking questions regarding weight depending on the physique of the witness. Though it can be important to ascertain the weight of an individual (e.g., in force cases and when having officer identify civilian witnesses), if a witness is obese, it will suffice to note that the witness is obese, based upon the investigator's own observations.

Only if appropriate during the course of the interview should the investigator ask questions based upon the section of the confidential witness information sheet titled "injuries and/or treatment." That is to say, the investigator should not question the witness about injuries prior to the start of the formal interview. As discussed further below, the confidential witness information sheet provides an easy checklist for the investigator and a ready place to take notes.

The confidential witness information sheet can be found in the Investigations Division computer drive.

PROHIBITION AGAINST ASKING WITNESS ABOUT IMMIGRATION STATUS

By executive order 41 of 2003, on September 17, 2003 the mayor of New York City prohibited city employees (other than law enforcement officers) from inquiring about a person's immigration status unless such inquiry is necessary for the determination of program or benefit eligibility or is required to do so under law. Thus, under no circumstances should CCRB investigators inquire of any witness about that witness' immigration status.

HOW TO RESPOND TO A WITNESS WHO SEEKS LEGAL ADVICE

If a witness asks the investigator whether the witness should retain an attorney or sue the city of New York, the investigator should tell the witness that the investigator cannot offer the witness legal advice of any sort.

STRESSING THE IMPORTANCE OF TELLING THE TRUTH—ESPECIALLY TO WITNESSES WHOSE COMPLAINTS STEM FROM A SUMMONS OR ARREST

Before turning on the recording device to begin the formal interview, it is particularly important to stress to witnesses whose complaints stem from a summons or an arrest that the CCRB is an agency that employs only civilians, is independent from the police department, and is independent of prosecutors' offices. Recording witness interviews makes it largely impossible to persuade witnesses, who may have reason to distort the truth, to be more candid at a later date. Because interviews are recorded, and because the CCRB in reality usually gets only "one crack" to obtain a witness' account of an incident, the investigator should tell the witness how important it is that the witness tells the truth so that the CCRB can successfully investigate his/her complaint. The investigator should also stress to the witness that the CCRB is not interested in investigating the witness' conduct, but that the investigator will have to ask questions about what the witness did or was doing that led to the police encounter. The investigator should convey how important it is that the witness be candid. The following is a suggested method of explaining the role of the CCRB for this purpose:

Q: We are almost ready to start the formal interview, but first I want to

take this opportunity to tell you how important it is that witnesses tell the truth. I want to emphasize that the CCRB employs only civilians. We are independent of the police department, the courts, and prosecutors. The CCRB's job is simply to investigate complaints of police misconduct. In order to do that, I am going to have to ask you questions about what you did and what you were doing that might have led to your interaction with police. The CCRB is not investigating what you did or what you were doing. But in order to successfully investigate your complaint, it is very important that you tell me everything that happened.

INTERVIEWS CONDUCTED BY TELEPHONE

The CCRB discourages investigators from conducting substantive interviews by telephone in the absence of an in-person interview. Conducting an interview by telephone prevents the investigator from knowing who he/she is dealing with and diminishes the investigator's ability to assess the witness' credibility. However, investigators will naturally have to speak to witnesses by telephone in order to schedule in-person interviews. And when there are no alternatives, investigators will have to conduct substantive, detailed interviews by telephone. When speaking to and interviewing witnesses by telephone, the investigator must abide by the agency policies set forth below.

Recording telephone calls and interviews

What to say

In 1999, the board determined that investigators should not surreptitiously record telephone conversations or interviews. When the investigator calls a witness to the incident under investigation, the investigator should record the call. Upon reaching a witness, the investigator should identify him/herself and state the purpose of the call. The investigator must tell the witness, "Please be aware that this call is being recorded to insure accuracy." If the witness questions the reasons for the recording, the investigator should advise the witness that "it is the CCRB's policy to record all conversations with witnesses because information gathered during the conversation could constitute evidence and it is important that nothing the witness says is distorted."

Whom to record

The investigator should only record telephone conversations with witnesses to the incident under investigation. The investigator should not record defense attorneys, prosecutors, attorneys, or employees of the police department when calling to obtain information or to schedule interviews.

Telephone Interviews

Attempts should always be made to conduct field work in order to obtain a statement from a complainant/witness and/or victim unable to come to the CCRB to be interviewed (see below "Interviews in the Field). These attempts should be made prior to the authorization of a phone statement.

Phone statements can be authorized only in rare cases, such as where complainant, victim, or witness lives outside New York City or New York State. Authorization for a phone interview can be provided only by a Deputy Chief of Investigations, in consultation with the Chief of Investigations. [REDACTED]

If the investigator receives approval to take a phone interview from a **complainant**, the investigator must first ask the complainant to send the CCRB a short, written statement regarding the incident. The complainant must have their statement notarized prior to sending it to the CCRB. That written statement from the complainant will serve as the complainant's sworn statement in the case. Once the written, notarized statement is received, the investigator can proceed to schedule a time to conduct a phone interview with the complainant and take a more complete statement from the complainant.

The civilian interview script must be read at the beginning of any phone interview of a complainant, witness, or victim.

[REDACTED]
[REDACTED]

If the complainant does not submit a written, notarized statement, the investigator should consult with the Squad Leader about whether to close the case. However, the Squad Leader should consult with the Chief of Investigations or the Deputy Chief of Investigations prior to closing any sensitive case and/or cases with extensive physical injury that may merit further work. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Remember: cases where video confirms (a) substantiated allegation(s) may not require a verified statement from a complainant, and the Squad Leader should consult with the Chief of Investigations or the Deputy Chief of Investigations immediately.

INTERVIEWS IN THE FIELD

The same procedural rules that apply to civilian interviews in the office apply to interviews the investigator conducts in the field. The investigator should explain what the CCRB is, obtain contact information from the witness pursuant to the confidential witness information sheet, and as described below, read the civilian witness interview script, record the interview, obtain an open-ended narrative, ask follow-up questions, and have the witness sign a verification form. The complainant/victim who refuses to be interviewed pursuant to agency policies may have his/her case closed without a full investigation.

To the extent that it is impractical out on the street to follow agency procedures, the investigator should generally go ahead and obtain the statement from the witness. The investigator ultimately will have to assess the weight, if any, that should be given to a statement obtained from an anonymous witness, a witness who has refused to allow his/her statement to be recorded, or from an unsworn witness.

TAKING NOTES

In order to efficiently prepare interview reports, the investigator should take notes during an interview. The investigator will jot down some of these notes in forms, like the police officer identification form and the confidential witness information sheet. But inevitably, the investigator will have to take additional notes. Note taking is a useful method for an investigator to recall specific facts or to note questions that need to be asked later, but the investigator should not bury their head in their paper and avoid eye-contact with the witness. All notes are to be preserved in the investigative file (see the chapter on case file organization).

Conducting the Substantive Interview

OVERVIEW

The structure of conducting the substantive interview is the same for both civilians and police officers. First, the investigator utilizes a script, one for civilians and one for police officers, that is designed to provide the witness with essential information and is also aimed at eliciting from the witness required information. At the end of each script, the investigator asks the witness to explain what happened. After the witness provides a narrative of what occurred, the investigator must follow-up with chronological and detailed questioning, designed to obtain the relevant facts pertaining to the complaint. Following the chronologically driven direct questioning, the investigator may have to pose more confrontational questions to the witness. Finally, as directed by the respective scripts, the investigator permits the witness to add any additional information.

The script the investigator uses for police officer interviews will be discussed in the section specifically pertaining to police officer interviews. It is important to note, however, that the structure and interviewing techniques used to interview civilians mirror those required to interview police officers.

BEGINNING THE CIVILIAN INTERVIEW—THE CIVILIAN WITNESS INTERVIEW SCRIPT

Immediately after turning on the recording device, the investigator must utilize the civilian interview script to document certain information about the case, inform the civilian of certain procedures and information, and to ensure that the witness provides the date, time, and place of the incident at issue.

The civilian interview script can be found on the Investigative Drive.

RESPONDING TO A WITNESS WHO ASKS QUESTIONS REGARDING THE CONFIDENTIALITY OF CCRB FILES

As the civilian interview script indicates, witness statements become part of the official CCRB investigative file. Under New York State Civil Rights Law section 50-a, CCRB investigative files arguably constitute police personnel records that by statute are deemed confidential and not subject to inspection or review without the express written consent of the police officer. However, the statute permits prosecutors, the Law Department of the City of New York (Corporation Counsel), a grand jury and other agencies of government which require the records, e.g., the New York City Comptroller and the NYPD, to obtain personnel records without the authorization of the officer. As further provided by the statute, the CCRB will release to the courts investigative files pursuant to New York State court orders; the CCRB also releases its files pursuant to federal subpoenas. Pursuant to Freedom of Information Act Law (FOIL) requests, it is the policy of the agency to invoke certain exemptions from the FOIL that limit the agency's disclosure of both open and closed cases.

In responding to a witness who questions the confidentiality of his/her statement, it is essential that the investigator provide honest answers; the investigator should never employ subterfuge in order to obtain the statement. Simply put, the investigator should tell the witness that the CCRB releases its files pursuant to lawfully issued subpoenas and upon request to prosecutors and other governmental agencies.

The investigator should also make the witness aware that should the case be substantiated, the CCRB provides the police department with the entire investigative file; the police department may contact the witness and may require the witness to testify at an administrative hearing, so that the department can discipline the police officer(s).

Pursuant to the agency policies described above, civilian witnesses and police officers are not permitted to record their interviews or obtain any other documents regarding the investigation during the pendency of the case. Once the case is completed, any individual is entitled to submit a request for all or part of the investigative file under the FOIL.

RESPONDING TO A WITNESS WHO ASKS QUESTIONS REGARDING THE VERIFICATION FORM

The investigator should explain to the witness that under the statute authorizing the creation of the CCRB, New York City Charter, chapter 18-A, § 440(c)(1), "[t]he findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement" It is thus the policy of the CCRB to obtain sworn statements from witnesses.

OBTAINING AN OPEN-ENDED NARRATIVE

After obtaining from the witness information relating to date, time, and place of occurrence, the civilian witness interview script essentially requires the witness to describe what happened, in a detailed manner. The police officer script, discussed in more detail below, also calls for the police officer to describe what occurred, after the investigator obtains information relating to the officer's

assignment.

What follows the question “What happened?” should be the witness’ own telling of the story, with as few interruptions as possible. The witness’ narrative should provide the investigator with an overview of the incident and may suggest areas of concern that were not previously apparent. It is important that the investigator refrain as much as possible from interrupting the witness. Civilian witnesses may initially provide information which appears irrelevant to the investigation, but as the witnesses speak, new allegations may surface and important details can become clearer. If the witness’ narrative begins to wander or the witness appears to lose focus, the investigator should gently redirect him/her to the incident at issue.

Investigators should not accept answers like Yeah, Yah, Ah-huh, Uh-uuh, or anything similar. These can be incorrectly interpreted, oftentimes taking on the complete opposite meaning of what the interviewee intended to communicate. Investigators must insist that the interviewee (be it a civilian or an MOS) answer with a clear yes or no. If the interviewee shakes their head, the investigator should respond by describing the action and requesting a verbal answer (e.g. “I see that you are shaking your head up and down; please state your response for the record.”).

If the interviewee uses his or her hands or any other part of his or her body to illustrate or otherwise describe something, the investigator must verbalize the actions for the record.

If the interviewee creates a diagram or a map or any other type of written exhibit during the interview, the investigator must take the original – or make a copy of the original – for the official case file; it must also be properly referenced in the interview summary. All maps should include a compass or other direction key. Should the interviewee make a mark or otherwise refer to an exhibit or document that the investigator provides during the interview, that exhibit or document must be signed and dated by the person who created it, and it must be added to the official case file and properly referenced in the interview summary.

As the witness speaks, the investigator should listen carefully and make mental notes or quick written notes about areas the investigator realizes for the first time that he/she must cover during the interview. The investigator should avoid distracting the witness by writing too much; the witness may feel self-conscious. The investigator should expand his/her mental picture of the incident to include the new material the witness provides in the witness’ narrative, so that the investigator can intelligently pursue it. The investigator should never anticipate or take facts for granted; instead the investigator will have to clarify all the details concerning the incident subsequently in the interview.

Investigators should be careful to always clarify what the MOS means to say when he/she provides answers such as: “I don’t recall” (as opposed to “I don’t know,” or “No,” or “I didn’t see,” or “I didn’t hear.”); and, “No -- I didn’t see/hear that,” (as opposed to, “No -- I wasn’t in a position to see/hear that.”).

DIRECT QUESTIONING OF THE WITNESS-OVERVIEW

Although many witnesses are forthcoming in providing a narrative of the incident, no witness will provide during his/her open-ended narrative all the details the investigator requires. Investigators

must always ask further questions of the witness in order to elicit from the witness an orderly, connected, and detailed account of the incident from the witness' vantage-point. Some witnesses will find intrusive the detailed questioning the investigator must pursue. Before beginning the direct questioning, it is often helpful for the investigator to explain (to civilian witnesses) what the investigator is going to do next, as illustrated below:

Q: In order to investigate the complaint thoroughly, I am going to have to ask you a lot of detailed questions. The questions are not meant to offend you in any way, but they are necessary so that I can obtain all the information needed for the investigation.

Chronology of direct questioning

When it is time for the investigator to pose direct questions to the witness, the investigator should establish a timeline of events and start at the very "beginning" of the incident. Where the investigator begins his/her line of inquiry is usually not where the witness began describing what happened. The investigator should be able to picture the location of the incident and determine, through detailed and meticulous questioning, what the witness was doing prior to the incident, the relationship that exists between all the witnesses, what occurred during the incident itself, and what the witness did following the incident. The investigator should ask questions that will develop the facts in their chronological order of occurrence. In other words, the investigator should question the witness in chronological fashion about what occurred before, during, and after the incident.

Obtaining details from witnesses concerning certain topics will inevitably interrupt the sequence of events and bog down the interview. For example, obtaining contact information for other witnesses identified by the interviewee takes considerable time.

Additionally, there will be topics the investigator must cover that are potentially offensive to the witness. For example, the investigator frequently must question a witness about drug or alcohol consumption prior to his/her encounter with police. The investigator should generally avoid such pointed questions at the beginning of the direct questioning. Instead, the investigator should save such questioning until he/she has already obtained the other relevant information the investigator needs.

Form of questions

Obtaining a timeline for a sequence of events requires use of both very open-ended questions like "What happened next?" or "What did you do next?" and more confined questions designed to obtain more details. Questions come in a variety of forms, ranging from open to leading. The principal touchstone that distinguishes forms of questions is the degree of freedom a question allows in a response. The degree of freedom permitted in the response to the following questions is increasingly restricted:

1. Describe the car.
2. What color was the car?
3. Was the car white?
4. The car was white, right?

In direct questioning of witnesses, CCRB investigators should generally avoid posing questions in the form illustrated in examples 3 and 4. These are questions that suggest an answer. Investigators should instead generally use questions that are non-leading, do not suggest an answer, and do not call for a yes or no response. In asking questions about details, investigators should begin by asking the least restrictive question (example one). Based upon the witness' response, the investigator can assess what details are still missing (color of car), and ask the more specific yet not suggestive question (example two).

Good questions are usually short and confined to one issue, clear and easily understood, and factual in nature rather than speculative. Investigators should avoid asking questions like "Isn't it possible that the male officer arrived before the female officer?" It is a truism that good questions ask who, what, where, when, and how. Investigators should also avoid overly formalistic speech in their questions. For example, instead of asking a witness, "What did you observe as you stood at the window?" the investigator should ask, "What did you see as you were standing at the window?"

Need for breaking down witnesses' conclusions

It is natural for witnesses to speak frequently by reaching conclusions rather than making factual statements. Witnesses oftentimes will say, "The police beat me up," "I saw the officer kick Bill while he was handcuffed," "Mr. Jones was acting disorderly," "Mr. Jones resisted arrest," or "That corner is a drug prone location." It is the investigator's job to determine the facts that form the basis of the witness' conclusions.

For example, in interviews where the witness claims to have seen something, the investigator must probe the witness' ability to make the observations. The investigator must ask questions concerning distance, lighting conditions, obstructions (parked or moving cars, pedestrian traffic, trees, buildings, etc.), the witness' view of the participants, and specific details about what the witness saw. These facts can only be obtained by asking questions like: "Where were you standing when you first saw Bill?" "Where was Bill when you first saw him?" "About how far from Bill were you when you first saw him?" "What were the sources of light at 10:00 p.m. when this occurred?" "What if any obstructions were there between where you stood and Bill stood?" and "Were there any parked cars between where you stood and Bill stood?"

In another example, when an officer claims that a civilian was "acting disorderly," the investigator must determine what facts led to this conclusion. The investigator must obtain these facts through numerous questions like: "Describe how the civilian was 'acting disorderly,'" "What did the civilian say?" "At what volume?" "Were there pedestrians or motorists within view?" "Were there pedestrians or motorists who appeared to be within earshot?" "Where?" "How many?" and "What if any response did these individuals have?"

DIRECT QUESTIONING-AREAS THAT MUST BE COVERED

After hearing the witness provide a narrative sequence of events, the investigator should have a clear idea of the areas that are particularly relevant to the issues raised by the complaint and consequently the areas that must be covered during the direct questioning. Outlined below are those areas that must typically be covered when interviewing either civilians or police officers. Though it makes sense to first set the scene and go through the incident chronologically, the

investigator must utilize his/her discretion in deciding when to cover other topics. The investigator should attempt, though, to obtain as much information as possible before asking the witness questions that are potentially offensive to the witness and cause the witness to “shut down.”

There will be relevant areas that must be covered that are not outlined below because of the particular issues raised by the complaint. For example, in stop, question and frisk cases, the investigator will always want to obtain from the civilian and police officer a physical and clothing description of the individual stopped. Similarly, in cases involving a stop of a vehicle, the investigator must always obtain a description of the vehicle stopped from both civilians and officers. For more guidance on what topics should be covered in search and seizure cases, see the chapter “Investigating and Analyzing Search and Seizure Allegations.”

Setting the scene

It is important for the investigator to be able to visualize, as much as possible, where the incident took place. To this end, the investigator must ask questions of both police officers and civilians to establish the physical context for the incident. In fact, this is often a good place to begin the questioning, even if the investigator has already established in his/her own mind the location of the incident. It is in setting the scene that the investigator should utilize maps, diagrams, and/or photographs in establishing the location of actors. As discussed above, the investigator should prepare a different map or diagram for each witness so that any notations an individual witness makes do not influence another witness. During the course of the interview, the investigator should have the witness sign and date the map or diagram.

Setting the context can also include obtaining clothing and physical descriptions of the civilians involved, when it is relevant. An example of using questions to establish the context for the incident is illustrated below. Assume that the witness in this case, Mr. John Smith, encountered the police soon after leaving his apartment building. In part, he has complained about being stopped and frisked at gunpoint:

Q: Between what avenues is your apartment building on 10th Street located? A: Between 1st Avenue and Avenue A.

Q: Is your building located on the uptown or downtown side of 10th Street?

A: The south side.

Q: Is it in the middle of the block, closer to Avenue A or closer to 1st Avenue?

A: It's right about in the middle of the block.

Q: What time did you leave your apartment?

A: Around 11:00 p.m.

Q: Did you leave your apartment alone, or with anyone else?

A: I left with Samantha Jones.

Q: Who is Samantha Jones?

A: She is my girlfriend.

Q: In what direction did you walk, towards 1st Avenue or Avenue A?

A: Towards Avenue A.

Q: Did you remain on the south side of the street or did you cross the street?

A: The south side of the street.

Q: Did you walk one ahead of the other or side-by-side?

A: Side-by-side.

Q: Who walked closer to the street?

A: I was closer to the street. She was closer to the buildings.

Q: Why did you and Ms. Jones leave your apartment?

A: To get milk from the deli. She wanted to come with me.

Q: What were you wearing?

A: Black jeans, a black leather jacket, and black motorcycle boots.

Q: Was your jacket zipped or buttoned or unzipped or unbuttoned?

A: Zipped.

Q: How long is your jacket?

A: Hip-length.

Q: Were you carrying anything that would have created a bulge?

A: No.

Q: Were you carrying a wallet in one of your pockets?

A: No.

Q: What was Ms. Jones wearing?

A: I don't remember, possibly her blue jeans jacket.

Q: Can you describe what Ms. Jones looks like?

A: Yeah. She is 21, she has long, straight blonde hair, she is thin, and she is about 5' 8".

Q: Where were you when you first saw the police car?

Determining why the witness was at the location of the incident and what the witness was doing

The investigator should determine why the witness (the interviewee) was at the location of the incident (unless it is obvious, e.g., the witness was at his home) and what the witness was doing. As illustrated by the questioning above, this witness was walking on the sidewalk to get milk from a store.

The identity of witnesses, the relationship, if any, amongst the witnesses, and witnesses' contact information

It is essential to determine through the interview the identity of other witnesses to the incident. It is also important to determine, if there are witnesses, what relationship may exist between or amongst the witnesses. As illustrated above, Mr. John Smith was with his girlfriend, Samantha Jones. At some point in the interview, the investigator should question Mr. Smith about the length of his relationship with Ms. Jones and how Ms. Jones can be reached. Depending on the complexity of the incident, the number of witnesses involved, and the attitude of the witness, the interviewer must decide whether to obtain this information as the interviewee relays witness information or to wait until after the witness recounts the narrative of the incident in response to direct questions. It is vital that the investigator obtain detailed contact information from the interviewee about all other witnesses including, if known, home and work addresses, telephone, pager, and cell phone numbers, and e-mail address.

How the police officer(s) and civilians encountered each other

In interviewing civilians, it is critical to establish the circumstances under which the interviewee encountered the police. While interviewing police officers, it is equally important to determine what led to the officer's encounter with the civilian(s). The circumstances under which the civilian(s) and officer(s) encountered each other must be established through the use of detailed and meticulous questioning, as illustrated below in the hypothetical interview of Mr. Smith:

Q: Where were you when you first saw the police car?

A: Close to Avenue A.

Q: How did you know it was a police car?

A: It was marked.

Q: Where was the police car when you first saw it?

A: I don't know which way the cop car traveled on Avenue A, but I noticed it immediately because it was traveling the wrong way on 10th Street. It was driving towards us.

Q: Then what happened?

A: It stopped on the southside of the street, next to the parked cars, right in front of us, and a male and female officer got out, yelled “police,” pointed their guns at us, and told us to put our “fucking” hands up.

Q: Who was driving the police car?

A: I didn’t notice, really.

Relevant actions and speech that form the basis of the complaint; addressing omissions and inconsistencies

The investigator must question both civilians and police officers about the underlying actions and speech that form the basis of the complaint, i.e., the FADO allegations. In interviewing the complainant/victim, in particular, it is important to question the witness sufficiently, without using leading questions, so that the witness has ample opportunity to describe what gave rise to a specific allegation. For example, a complainant/victim states in her original call to CCRB that an officer called her a “bitch.” During her open-ended narrative, the complainant/victim does not mention the officer saying this. The investigator should not ask, “Did the officer call you a bitch?” Instead, the investigator should, at different junctures while questioning the witness about the incident, ask, “What, if anything, did the officer say when he arrived at your car?” and “What, if anything, did the officer say after you gave him your license and registration?” However, if by the end of the interview, the complainant/victim does not raise a particular aspect of the underlying action or speech that forms the basis of the complaint—or if the complainant/victim offered a conflicting version—then it is critical that the investigator address that omission and/or inconsistency directly. This should be done by referencing the previous statement.

What follows is an excerpt from a hypothetical interview with Mr. Smith. The excerpt pertains to some of the actions and speech that form the basis of the complaint. While questioning Mr. Smith, the interviewer utilizes the fact that there are distinct differences between the two officers involved (gender), so that it is clear what Mr. Smith says each officer did. It is important to try to distinguish between or amongst officers (by race, sex, height, or weight) in questioning witnesses in order to ensure that it is clear about whom the witness is speaking.

Q: Who yelled these orders at you and Ms. Jones?

A: It seemed to me that both officers were yelling over each other and at the same time.

Q: Where was the female officer?

A: Well, I don’t know who jumped out of the cop car first or from where. Both officers were walking from the car towards us on the sidewalk.

Q: Where was the female officer’s gun?

A: She was pointing it at us—so was the male officer.

Q: As you faced the street, which officer was on your right or left? A: It happened so fast, I don’t know.

Q: What happened next?

A: I was scared and started to move towards the wall of the building. The male officer came towards me, grabbed me and pushed me up against the wall, and I spread my arms while facing the wall.

Q: What did Ms. Jones do?

A: She was to the right of me on the wall. I think the female cop forced her to the wall, too.

Q: What happened next?

A: We were searched.

Q: When you say searched, what do you mean?

A: The cop ran his hands all over my body and clothes, like you see on t.v.

Q: Which officer ran his hands over your body and clothes?

A: The male officer.

Q: Did he put his hands in your pockets, or underneath your clothes?

A: No.

Q: While the male officer patted your clothes, what was the female officer doing?

A: She was patting the clothes of Samantha.

Q: What, if any, conversation took place while the officers were patting you and Ms. Jones down?

What the witness did following the civilian-police encounter

It is important to determine what the witness did following the civilian-police encounter. The investigator should know, for example, whether the civilian or police officer sought medical attention for the injuries he/she claims were incurred and to whom the witness spoke or reported the incident. Essentially, the investigator needs to determine whether the witness' conduct following the encounter is consistent with the encounter as the witness described it. The questioning of Mr. Smith illustrates this point:

Q: What did you do after the officers left in their patrol car?

A: I was so upset, I went with Samantha straight to the 9th precinct to make a complaint.

Q: How did you get there?

A: We walked.

Q: Approximately how long did it take to walk to the 9th precinct?

A: Minutes. We went straight there. We didn't do anything else.

Q: What happened at the precinct?

Determining whether there is a prior relationship between or among the civilian(s) and police officer(s)

Often a good prelude before asking questions pertaining to the identification of civilians and police officers, is to ask the witness if he/she has ever seen or had any previous interaction with the civilian (if the witness is an officer) or with the police officer (if the witness is a civilian). If the civilian and officer have had a previous interaction or have seen each other before, this is important to determine in order to establish identification. The circumstances of past sightings or interactions, including arrests, must be established and can be relevant in assessing the parties' motives and biases.

Information concerning the identification of police officers and of civilians

Descriptive information about the officers can be obtained at the outset, during direct questions when the officer is first mentioned, or at the end of the interview, depending on when the investigator deems it appropriate. Regardless, it is essential that during the direct questioning the investigator utilize distinctions between or amongst the officers so that it is clear about whom the witness is speaking.

Police officers often do not know the names of the civilians with whom they interacted. The investigator should not presume such knowledge and should ascertain from the officer descriptions of the civilians with whom they interacted. Not only does this make it clear about whom the officer is speaking, it also aids in ensuring that the subject officer(s) is properly identified. The investigator should obtain enough descriptive information from the officer so that it is clear whom the officer is speaking about.

In many cases, the investigator must uncover which unit and what officers interacted with the civilian(s). In other cases, the investigator must determine which officer of a partnership or team took what action. And in other cases, the investigator must ensure that the witness' identification of a specific officer is accurate. Citing any officer as a subject of a CCRB allegation can have serious ramifications for that officer. Naming an officer as a subject is a decision that should be based upon a preponderance of the evidence. It is essential that the investigator obtain sufficient descriptive information from all witnesses to help ensure that civilians and officers are properly identified. Towards this end, the investigator should utilize the form called "police officer identification aid." This form acts as a checklist for the information the investigator needs to gather, even if the witness claims that he/she knows the officer's name or badge number. And if the witness claims, for example, that he/she knows the officer's name or other identifying information, the investigator must ask the witness how the witness knows that specific information.

The information required for the form should be incorporated into the investigator's questions of the witness. The police officer identification aid is reproduced below. [REDACTED]

[REDACTED] In the hypothetical interview of Mr. Smith, the form can be used as demonstrated:

Q: Can you describe the male officer?

A: Well, he was black, big and tall.

Q: How was he dressed?

A: He was in the standard dark blue police uniform.

Q: You said the officers came from a marked vehicle. What type of vehicle?

A: A regular police car.

Q: Did you see the license plate number or any markings on the car?

A: No.

Q: Did you see his name or number on his nametag?

A: No.

Q: How tall did he appear to be, the same height, taller, or shorter than you are?

A: Taller than me, by about three inches and I am 5' 11".

Q: Describe his build-and can you estimate his weight?

A: Just a big guy—like a linebacker.

Q: How old did he appear to be?

A: Mid-twenties.

Q: What color were his eyes?

A: Brown

Q: What color was his hair?

A: Black

The circumstances under which the complaint was filed and an explanation for any delay in making the complaint

When interviewing the complainant, the investigator should determine how, when, and where the complaint was made. If there was a delay in filing the complaint, the investigator should determine from the complainant/victim the reason for the delay.

Determining whether the witness sustained injuries and if so, what treatment the witness obtained

Civilians and police officers who describe a physical encounter must be questioned about whether they sustained any injuries. The investigator should obtain detailed descriptions of these injuries and how the specific injuries occurred.

In addition to questioning a witness about that witness' particular injury, when a civilian has sustained an injury the civilian claims was a result of his/her interaction with the police, the investigator should ask the officers involved to describe the civilian's physical condition and explain

how the civilian sustained the particular injury. If possible, the investigator should read the description of the injury from the medical records, show the officer pictures of the injury, and ask the officer to explain how the injury was sustained. Similarly, if an officer sustained an injury he/she claims was a result of his/her interaction with the civilian, the investigator should ask the civilian to describe the officer's physical condition and explain how the officer sustained the particular injury. If possible, the investigator should read to the civilian the description of the injury from the officer's medical records, show the civilian pictures of the officer, and ask the civilian to explain how the officer's injury was sustained. Depending on when the civilian or officer is interviewed, in order to obtain the answers to all these questions the investigator may have to interview the witnesses for a second time.

A witness who claims to have sustained injuries must be asked if he/she missed work as a result of the injury. The investigator must determine what treatment, if any, the witness administered to him/herself or obtained from paramedics, hospitals, clinics, or private doctors. In order to facilitate questioning on these matters, as well as note taking, the investigator should utilize the confidential witness information sheet under the categories listed under "injuries and/or treatment." An example of such questioning follows:

Q: Mr. Smith, did you sustain any injuries as a result of your encounter with the police?

A: Yeah, well as I said the male cop kind of hit me in the face with his gun. My cheek hurt.

Q: Which cheek?

A: My right cheek.

Q: Describe what your cheek looked like afterwards.

A: It was red and it swelled up.

Q: Did you seek any medical treatment?

A: Not from a doctor.

Q: Did you do anything yourself to treat your cheek?

A: Well, my head was pounding and my cheek hurt. I took aspirin and put ice on my cheek that night.

Q: Did you require any such treatment the next day?

A: No.

Q: Did you go to work the next day?

A: Yes.

Obtaining the witness' signature on (a) medical release form(s) (HIPAA)

If the witness asserts that he/she was treated by paramedics, a hospital, a clinic, or any physician, the investigator must obtain as much contact information as possible for the treating physician or

entity. The investigator must also prepare and have the witness sign a medical release form (HIPAA) for each treating doctor's office or treating institution, so that the investigator can obtain the medical records. In the case of police officers, the investigator should try to obtain the officer's release of his/her records. If the officer and his/her representative resist, the investigator should attempt to persuade the officer by noting that medical records frequently offer independent corroboration of a witness' account.

If the witness claims that he/she was injured and did not receive medical treatment or delayed in obtaining such treatment, the investigator should find out why.

Ask the witness if the witness had photographs taken of his/her alleged injuries. If so, try to obtain the original photographs; otherwise get color copies made of the photographs or scan them if scanning is the investigator's only option.

Photographing witnesses

The investigator may want to show a photograph of a civilian witness to other witnesses (civilians and/or officers) to confirm the identification and role of that civilian witness or to refresh other witnesses' recollections. Towards that end, the investigator should take a picture of the civilian witness. The investigator should also make a copy of the witness's photo identification (e.g. driver's license), but this document should not be shown to other witnesses.

In addition, the investigator should photograph a witness to capture visible injuries or the absence of injuries. If a witness has a visible injury, after the formal interview the investigator should photograph the witness' injuries using a (digital) camera. Prior to taking photographs of the witness, the investigator should first photograph a piece of paper upon which the investigator writes his/her name, the date and time, and the CCRB case number. The investigator should note the visible injuries on the confidential witness information sheet and take photographs showing the witness' face and linking the witness to the close-up photographs of the injury. Close-up photographs of the injury should include a ruler, next to the injury, to document the size of the injury. To give perspective to a non-linear injury, the investigator can place an object (i.e. a quarter or penny) next to the injury.

If a witness describes an event from which he/she should (still) have a visible injury but does not, the investigator should take photographs showing the witness' face and linking the witness to the close-up photographs of where the injury should be apparent.

Information pertaining to the arrest or issuance of a summons

The investigator should first determine if the police arrested the witness and/or issued the witness a summons. If so, the investigator will know that he/she must obtain the summons(es) and/or the criminal court documents as well as paperwork relating to the arrest. In addition, when interviewing a civilian who has been given a summons or was arrested, the investigator should ask the civilian what happened to the summons or arrest. The investigator should also determine whether the witness believes there is a relationship between the CCRB complaint and his/her desire to combat the summons or criminal charges. Such questioning is illustrated below:

A: The officer gave me a summons.

Q: For what?

A: Speeding.

Q: Did you respond to the summons the officer issued to you?

A: Yes. I pleaded not guilty and am waiting to learn when I am getting a hearing at traffic court.

Q: What, if any, effect do you believe the CCRB complaint will have on the disposition of the summons?

A: I hope it will help me get out of it.

At the end of the interview, the investigator should explain to the witness that the CCRB investigation is wholly independent of the judicial process by which a summons or criminal charges is adjudicated.

When interviewing a police officer who issued a summons or made an arrest, out of which arose the CCRB complaint, the investigator should inquire of the officer what happened to the summons or arrest. The investigator should determine, for example, if the officer testified regarding the summons or spoke to a prosecutor about the arrest or testified in court regarding criminal charges. The investigator will then know whether to consider obtaining the relevant court transcripts. (Grand jury testimony is secret and cannot be obtained by the CCRB from prosecutors).

Information pertaining to a civil lawsuit

Upon questioning a complainant or victim, the investigator should ascertain whether the complainant or victim has filed or is considering filing a civil lawsuit against the city of New York. If so, the investigator should ask the witness what attorney is representing the witness, if there are other plaintiffs, which officers are defendants in the lawsuit, and for how much is the witness suing. The investigator should subsequently determine the status of the lawsuit. The investigator will know that he/she must monitor the lawsuit and must ultimately obtain the notice of claim, the civil complaint, the 50-h hearing testimony, and the transcripts of any other depositions that have taken place. The investigator should also ask what, if any, effect the witness believes the CCRB complaint will have on the outcome of the lawsuit.

If there is a civil lawsuit pertaining to the incident that forms the basis of the CCRB complaint, the investigator should ask police witnesses if they are aware of the lawsuit. The investigator should ask the officer if he/she has consulted with the Corporation Counsel and/or has retained his/her own attorney.

Determining whether the witness has been interviewed by another investigative body

The investigator should ask every witness whether the witness has been previously interviewed by anyone else about the incident. If the witness has been previously interviewed, the investigator will have to determine who interviewed the witness, and when and where that interview took place.

The investigator will then know that there may be records he/she needs to obtain and/or investigators or prosecutors he/she needs to contact.

DIRECT QUESTIONING—AREAS THAT MUST BE COVERED THAT MAY OFFEND THE WITNESS

Upon review of the case file and hearing the witness' open-ended narrative, there will often be areas about which the investigator wants to question the witness that may offend the witness, causing the witness to "shut down." As discussed below, the investigator may want to question the witness about drug or alcohol use prior to the incident, or about inconsistent statements, and/or to question aspects of the witness' account. Questioning the witness on these topics should generally be reserved until after the investigator obtains all other relevant information from the witness. Thus, the investigator should generally conduct more confrontational questioning at the end of the interview.

Inconsistent statements

As previously discussed [see section labeled, "Relevant actions or speech that form the basis of the complaint; addressing omissions and inconsistencies"], the investigator must be familiar with each witness' prior statements. Consequently, as the interview proceeds, the investigator will know whether the witness is presently making statement(s) that are materially inconsistent with the witness' prior statement(s) or has in the past made inconsistent statements regarding relevant and important facts. In these situations, the investigator is obligated to confront the witness with the inconsistencies and ask for an explanation. The investigator should provide the witness with ample opportunity to discuss these facts prior to a direct confrontation. The fact-finder—in this case the board—is entitled to know if the witness has an explanation for the inconsistency. What follows is an example of how to question a witness regarding a prior inconsistent statement. Though the example is of an MOS interview, the same holds true for civilian interviews.

Q: Officer, did you prepare a stop and frisk report in connection with the stop of Adam Eve?

A: Yes.

Q: When did you prepare that report?

A: Right after the stop. I had 250s with me in the car.

Q: I am going to show you a stop and frisk report for Adam Eve. Is this the report that you filled out?

A: Yes.

Q: Were you asked within the report to indicate whether a search had been made under Mr. Eve's clothes?

A: Yes.

Q: Did you check the box indicating that you searched under his clothes?

A: Yes.

Q: During our interview today, you said that you patted down Mr. Eve but that you did not search in his pockets or under his clothes. Can you explain the discrepancy between what you said today and what you checked on the stop and frisk report you filled out immediately after the actual stop?

It is imperative that investigators directly confront witnesses with inconsistencies and/or omissions from previous statements and/or previous points in the interview.

Drug and/or alcohol use

That a witness is a drug user or abuses alcohol is not generally relevant to the investigation of CCRB complaints. What will be relevant, however, is if the witness used drugs prior to the incident at issue or was intoxicated or “buzzed” or drunk during the incident. Being high or drunk may affect a witness’ behavior prior to the incident and during his/her interaction with the police. Being high or drunk during the incident may also affect the witness’ ability to accurately recall the incident and hence the witness’ reliability. An example of such questioning follows:

Q: Mr. Smith, you said you and Ms. Jones left your apartment at about 11:00 p.m. to get milk. What were you and Ms. Jones doing prior to leaving the apartment?

A: We had had dinner and were watching T.V.

Q: Did you consume any alcoholic beverages over the course of the evening, before you left the apartment?

A: We shared a bottle of wine over dinner.

Q: About how many glasses of wine did you drink?

A: I had about three to four glasses.

Q: About how many glasses of wine did Ms. Jones have?

A: We finished the bottle. So she had two to three.

Q: Prior to leaving the apartment, had you used any drugs, including marihuana?

A: I took a few hits from a joint.

Q: A marihuana joint?

A: Yeah.

Q: Please answer with a yes or a no. Was the joint marijuana?

A: Yes.

Q: What about Ms. Jones?

A: She did too.

Q: How did you feel when you left the apartment?

A: I was definitely buzzed, but I wasn't out of it or anything. I knew exactly what was going on.

If the witness objects to such questions, attempt to persuade the witness to answer by explaining that it is important for the witness to tell the truth about everything that happened so that the complaint can be successfully investigated. The investigator should also explain that should the complaint be substantiated, it is better for the witness to be truthful now rather than be confronted with the same questions during the administrative disciplinary process.

Record of criminal conviction(s) and use of aliases

There are a number of circumstances under which an investigator will question a witness about his/her criminal past. When a complaint arises out of an arrest, as discussed above the investigator must question the witness about what the witness was doing before, during, and after his encounter with the police. The investigator will also attempt to ascertain the status of the summons or criminal charges that may have resulted from that arrest. In addition, the investigator will question the witness about whether the witness saw or had any interaction with the officer(s) prior to the incident under investigation. This may require the investigator to question the witness about prior arrests with which the officer(s) was involved. With respect to questioning witnesses generally about their arrest and conviction history, in most cases it will be unwise and unnecessary.

It will be the rare case that demands that the investigator question the witness about unrelated arrests and criminal convictions. First, through a search of BADS and OCA, the investigator will be able to obtain on his/her own a history of the witness' New York City criminal convictions (misdemeanors and felonies, not violations). And secondly, the agency does not want to discourage citizens from filing complaints or cooperating with the CCRB by providing statements, something that may result from such questioning. Consequently, the investigator should not routinely question witnesses about their arrest and conviction history.

MAKING SURE THE RECORD IS CLEAR

Sometimes the investigator will ask the witness to demonstrate a particular action in order to get a better sense of what occurred. When witnesses point to a place on their body or demonstrate a particular motion, it is the investigator's job to describe verbally (so that it is recorded) the witness' nonverbal conduct as illustrated below:

Q: With what hand did the officer hit you with the gun?

A: His right hand.

Q: Where did he hit you?

A: He hit me here.

Q: For the record, the witness is pointing to his right cheek, right below the cheekbone.

Another common example of when an investigator should verbally describe what is happening

LETTING THE WITNESS KNOW WHAT HAPPENS NEXT

The investigator should provide every witness with a business card with the investigator's correct telephone number. The investigator should inform the witness about the investigative process, what will occur with respect to the complaint, and that the investigator may have to speak to the witness again. If the witness moves or changes telephone numbers, he/she should be told that the witness should contact the investigator. Each witness should be informed that if he/she has any questions at any time, the witness should contact the investigator. With respect to complainants and alleged victims, the investigator should tell them that after the board reviews the case, the complainant will receive a disposition letter. The following is a suggested way of letting the witness know what happens next:

Q: Now that we have finished with the interview, let me tell you what happens next. I have to complete the investigation of this complaint. That usually entails interviewing all witnesses to the incident, including police officers. I also have to obtain your medical records and relevant police records. I may very well have to speak with you again to show you photographs of police officers and to ask you additional questions. When the investigation is concluded, the board reviews the investigative file and makes findings with respect to the complaint; it determines whether the evidence proves that the police committed misconduct. You (complainant or alleged victim) will receive a letter informing you of what the board decided. If the board determines that misconduct occurred, it recommends a level of discipline and refers the case to the police department. The police department then has to decide whether to discipline the officer. When a case is substantiated, the police department may call you to testify at an administrative hearing. Do you have any questions?

A: No.

Q: Here is my card. If you have any questions at any time about the case, please call me.

A: Okay.

[REDACTED]

Interviewing Police Officers—Special Issues

While police officers have specific rights when they are compelled to answer questions posed by a CCRB investigator, the interviewing techniques the investigator employs to interview civilian witnesses are the same as the techniques the investigator must employ to interview police officers. Officers generally are not as forthcoming with CCRB investigators as civilians, especially those

civilians who are complainants. The investigator must therefore take the time to ask all the questions necessary to establish the facts in as much detail as the investigator usually extracts from cooperative civilian witnesses. This section describes police officers' rights at CCRB interviews and discusses how to deal with particular challenges posed by interviewing police officers.

RIGHTS OF POLICE OFFICERS

Right against self-incrimination and use immunity

Under the fifth amendment of the United States Constitution, "no person shall be compelled in any criminal case to be a witness against himself." In many police department internal investigations, as well as in some CCRB investigations, the conduct at issue may constitute a crime. As a result, the police department and the CCRB, as government entities, cannot compel officers to answer questions. Through the grant of use immunity, however, the police department compels its officers to answer questions in internal departmental investigations and requires officers to submit to interviews by CCRB investigators. Use immunity means that the government cannot use the compelled statements or evidence derived from those statements as evidence against the officer in a criminal proceeding. By contrast, because the Fifth Amendment guards against self-incrimination only in criminal proceedings, the department can always compel officers to provide statements that can be used against them in administrative disciplinary proceedings.

Patrol Guide procedure 211-14—Investigations by the Civilian Complaint Review Board

The first half of this Patrol Guide procedure compels officers to appear before and respond to questions posed by CCRB investigators. The procedure generally discusses the officer's rights and obligations while at CCRB, specifies that an officer who fails to answer questions truthfully and fully can face disciplinary action, and provides for immediate suspension should an officer refuse to answer an appropriately posed question. Although this is a departmental procedure the investigator is under no obligation to read to the officer, the investigator's police officer interview folder/binder must contain this Patrol Guide procedure, so that the investigator can refer to it if necessary.

Patrol Guide procedure 206-13—Interrogation of members of the service

Patrol Guide procedure 206-13, which governs the department's own interviews of police officers, has important implications for CCRB interviews. The CCRB's rules regarding the conduct of interviews, as discussed below, grant the officer who appears at the CCRB the same rights the officer is afforded under Patrol Guide procedure 206-13. Again, while the investigator is under no obligation to read this procedure to the officer, the investigator must include this Patrol Guide procedure in his/her officer interview folder/binder so that he/she can refer to it if necessary.

CCRB rules governing the conduct of police interviews

Four rules promulgated by the board soon after its creation pertain specifically to interviews with police officers: CCRB rules subchapter C, § 1-24(a), (b), (d) and (f). The investigator must incorporate these rules into his/her officer interview folder/binder, be prepared to read to the police officer the CCRB policy statement contained in subsection (d) in each officer interview, and be prepared to refer to the other rules as necessary. The four applicable subsections are set forth below:

(a) It is the intent of these rules not to alter the rights afforded to police officers by the police department Patrol Guide with respect to interviews so as to diminish such rights, including but not limited to the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the police department who is the subject of a complaint shall be given two business days notice prior to the date of an interview, to obtain and consult with counsel. A member of the police department who is a witness in an investigation of a complaint shall be given a period of time, up to two business days, to confer with counsel.¹

(d) Prior to the commencement of the interviewing of a police officer, the following statement shall be read to such officer unless waived by the officer and/or his/her representative:

You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of the State of New York, and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

If you refuse to testify or to answer questions relating to the performance of your official duties, your refusal will be reported to the police commissioner and you will be subject to police department charges which could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent police department charges.

(f) The interviewer shall inform a member of the police department of the name and position of the person in charge of the investigation, name and position of the interviewer, the identity of all persons present at the interview, whether the member is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

Rights of officers who have been previously interviewed regarding the incident

In 1999, the board decided that upon request by police officers (and civilian witnesses), officers and civilian witnesses have the right to review their prior interviews regarding the incident under investigation, consistent with civil litigation rules. Prior interviews include recorded CCRB interviews and police department interviews.

When interviewing a police officer who has previously provided an official statement regarding the incident, the investigator should enter the interview room with the prior interview cued-up. If the witness asks to listen to the prior interview, the investigator should stay in the room and play the recorded interview (for all previous CCRB statements, as well as IAB GO-15 statements that were obtained by CCRB through a request to the Chief of IAB). If the CCRB obtained recorded interviews from an ongoing/open IAB investigation (that is, the interview recordings are in the control of MAS while at the CCRB), then the investigator should not stay in the room.

After the officer has listened to his/her previous statements, the investigator should conduct the interview. The investigator should not provide to the witness a copy of the prior interview report(s), since the reports do not necessarily reflect the interview in its entirety. The investigator should note in the new interview report that the witness listened to his/her previous interview(s) prior to the interview that is the subject of the new report.

Information to which the officer is entitled before being interviewed

CCRB rule C § 1-24(f) set forth above delineates the information to which an officer is entitled before he/she is interviewed. That information mirrors the information that must be provided to the officer, under Patrol Guide procedure 206-13, when the department interrogates the officer. And Patrol Guide procedure 211-14, which pertains to an officer's appearance before CCRB, dictates that the questions posed by CCRB investigators must be in accordance with CCRB rules and regulations for the conduct of interviews. As a result, at the same time that the investigator schedules an officer for an interview using the CTS, the CTS automatically generates a form setting forth the information to which the officer is entitled. All the investigator has to do is summarize the incident under investigation. The investigator is responsible for ensuring that that data is accurate and updated and sufficiently detailed and provided to the officer before the officer is interviewed.

BEGINNING THE FORMAL INTERVIEW—THE POLICE OFFICER INTERVIEW SCRIPT

Generally, the investigator will be summoned to conduct the interview once the officer and his/her representative have conferred about the case and are in an interview room. The investigator should introduce him/herself to the representative and the officer and should address the officer by rank, e.g., "officer," "sergeant," or "detective." Officers are required to bring their memo book entries from the date(s) of the incident(s) for which they are being interviewed. The officers are required to make copies of these entries and leave these copies with the receptionist in the MOS waiting room. The investigator must obtain these copies and review them **before** beginning the interview. The investigator should also review the pedigree sheet filled out by the officer (detailing the officer's physical characteristics) and ensure that the officer has accurately provided all the necessary

information. Once the investigator has reviewed the records the officer brought, the investigator is ready to begin the interview.

Immediately after turning on the recording device, the investigator must utilize the police officer interview script to document and obtain certain information about the case and advise the officer of his/her rights. [REDACTED]

Witnesses who are former New York City police officers

The investigator may need to interview a witness who was previously employed by the New York City Police Department as an officer. Because the witness is not a current employee of the department, the interview is not being conducted pursuant to the Patrol Guide. Consequently, the investigator should regard the former officer as a civilian witness and utilize the civilian witness interview script.

Incorporation of Patrol Guide procedure 203-08 into the police officer interview script

Patrol Guide procedure 203-08 (as revised by interim order 4/2005) prohibits the making of a false official statement. Statements made by an officer during a CCRB interview constitute an official statement. Although this is a departmental procedure the investigator is under no obligation to read to the officer, the investigator's police officer interview folder/binder must contain this Patrol Guide procedure, so that the investigator can refer to it if necessary.

Should an officer's representative object to the investigator asking the officer about Patrol Guide procedure 203-08, the investigator should note the objection and continue with reading the script.

INTERACTING WITH OFFICERS' UNION ATTORNEYS OR REPRESENTATIVES

It is important to establish a working dynamic with officers' attorneys or representatives. The investigator must treat officers and their representatives professionally, courteously, and objectively, even if the investigator disagrees with them. The investigator who establishes a good relationship with representatives will generally be given greater leeway and greeted with fewer objections than an investigator who is viewed as biased or discourteous. In addition, the investigator who is organized, prepared, confident, and knowledgeable will gain the respect of both the officer and the representative.

Part of conducting oneself professionally is to be prompt and prepared. On days when the investigator has (an) officer(s) scheduled for (an) interview(s), the investigator must be at the CCRB by 8:30 a.m., so that the interview(s) is not delayed.

The investigator should understand that the job of the officer's representative is not to aid the CCRB; the representative's goal is to help the officer who is being questioned. In trying to achieve this goal, the representative may interject with comments, criticisms, and objections. And while the officer is obligated to answer questions, the representative may advise the officer not to volunteer information. [REDACTED]
[REDACTED]
[REDACTED]

One of the most difficult aspects of interviewing an officer is dealing with an aggressive

representative. As discussed above, under CCRB rule subchapter C § 1-24(c), the counsel or representative who accompanies a witness “may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.” Patrol Guide procedures 211-14 and 206-13 do not address the rights of attorneys or representatives in interviews; **the procedures certainly do not grant officers’ representatives the right to object to questions or ask questions themselves.** Thus, the investigator is within his/her rights to respond, “Objection noted, please answer the question,” or “Officer Eve will have the opportunity to make a statement after I complete the questioning. Please do not interrupt the interview.” If a representative makes it impossible for the investigator to control the interview, the investigator should stop the interview and speak to the representative outside of the interview room and reiterate to the representative that he/she does not have a right to interrupt the interview with objections or questions. During this recess, the investigator should also seek out a supervisor to sit-in on the remainder of the interview.

While the investigator is free to note objections or ask that the representative refrain from injecting her/himself into the interview, sometimes the objections the representative makes are valid. Sometimes the questions posed by the representative are not simply self-serving but are instead reflective of a topic the investigator has neglected and actually beneficial to the investigation. The investigator then, must be aware of his/her options and make tactical decisions based on the circumstances of the case. [REDACTED]

QUESTIONS THAT COMMONLY LEAD TO OBJECTIONS AND HOW TO DEAL WITH SUCH OBJECTIONS

The investigator should avoid summarizing any other witness’ testimony and then asking the officer how the officer can explain his/her own testimony. For example, the investigator should not say to the officer, “Officer Bill Smith stated to the CCRB that you hit the John Citizen. How do you explain his testimony?” This is an impermissible question to which the representative should object. It is also ineffective. In questioning the officer, the investigator should incorporate his/her knowledge of other witnesses’ testimony in asking fact-based questions. It will then be up to the investigator to resolve who is credible and what occurred.

The investigator should avoid asking hypothetical questions, which in court are also impermissible. The investigator should avoid asking, “Isn’t it possible that ...?” The investigator should avoid asking, “Officer, if John Doe had in fact done X, how would you deal with that?” If the investigator seeks to determine how the officer was trained to deal with a certain situation, the investigator should simply ask that question. For example, “Officer, what training have you had regarding how to approach an individual suspected to have a gun?” The investigator should follow-up with the question, “What were you trained to do?”

It is the job of the CCRB investigator to obtain a detailed chronology of the incident as viewed by the witness. When the representative objects to a question because it has been “asked and answered,” the investigator should respond by 1) explaining that it the investigator’s job to ensure he/she understands what the officer is saying and that the investigator needs to clarify the point and/or 2) noting the objection and asking the officer to answer the question. When the representative objects to detailed questions because “it is impossible for anyone to remember such

minutia,” the investigator should respond by: 1) explaining that it is his/her responsibility to obtain a detailed account of the incident; 2) stating that the question is relevant; and/or 3) noting the objection and asking the officer to answer the question.

In some cases, the officer has related some personal information about him/herself to the civilian. In order to corroborate the civilian’s account, the investigator seeks to confirm that personal information by asking questions regarding the officer’s background. The investigator should respond to an objection by explaining that the question is based on information supplied to the CCRB by the civilian witness, the investigator’s job in part is to determine the credibility of parties by corroborating their accounts, and that the question is therefore relevant to the investigation of the officer’s conduct.

Sometimes representatives want to know the source of the information that is being incorporated into the investigator’s questioning and will ask the investigator to tell the officer and the representative, “Who said that?” The investigator should remind the representative that the CCRB is not obligated to provide such confidential information to the officer. Should the case be substantiated and forwarded to the department, the department will provide discovery to the officer at the appropriate time. The investigator should never quarrel with a representative on record. Instead, the investigator should pause the recording and get a supervisor.

Whenever there is a situation where multiple parties are speaking at the same time—cross-talk—(regardless of which two or three people are talking), the investigator should stop the interview (not the recording) and explain for the record what happened, who was talking, and then request that all parties refrain from talking at the same time as anyone else. The investigator should then restate the question that preceded the cross-talk.

WHAT TO DO IF THE OFFICER REFUSES TO ANSWER A RELEVANT QUESTION

Aside from dealing with representatives who are simply aggressive, the investigator may face an officer who refuses to answer a relevant and important question. In such a case, the investigator must seek out a supervisor. Ultimately, the investigator, in consultation with a supervisor and a member of the executive staff, may have to ask the department’s liaison to the CCRB, who is assigned to the Disciplinary Assessment Unit, to compel the officer to answer the question or face suspension.

THE OFFICER WHO DOES NOT REMEMBER

Police officers genuinely may not remember events that occurred weeks or months prior to the interview or that at the time were insignificant to the officer. Sometimes, as discussed below, the investigator can refresh the officer’s recollection by showing the officer photographs of the civilians involved, showing the officer department records or court records, or by highlighting some of the facts of the incident. Other times, the officer may rely on “I don’t remember” when the officer does not want to reveal to the CCRB what he/she knows, to cover up what he/she believes is questionable behavior he/she or a fellow officer committed. In the former situation, it may be possible to refresh the officer’s recollection. In the latter, it will be nearly impossible for the officer to recant his/her assertion that he/she does not recall. In either case, the techniques for attempting to refresh recollection are the same. The techniques for attempting to determine a police officer’s motivation in asserting that he/she does not recall are also the same. What is important is that a

clear record is made regarding the officer's ability to recall the incident.

Many times officers may "default" to saying that they do not recall a specific fact. It is important that the investigator clarifies what the officer means by not recalling something. The officer not being in a position to see the interaction, or the officer denying seeing the interaction take place, but acknowledging that it could have taken place when s/he was not there, is very different than not having a memory of such an event.

Show the officer each individual report, photograph, and diagram concerning the incident

Once the officer has asserted that he/she does not remember the incident under investigation, if the investigator has documents or photographs or diagrams concerning the incident, the investigator should show each one individually to the officer, as illustrated below:

A: I don't remember the arrest.

Q: I am going to show you the arrest photograph of Martin Luis. Let me know when you are finished looking at it.

A: I'm done.

Q: Looking at that photograph, does that refresh your recollection regarding the arrest of Martin Luis?

A: No.

Q: Take a look at the arrest report for Martin Luis, based upon the online booking sheet prepared by Officer Collar. Let me know when you have finished reading it.

A: I've read it.

Q: Having read the arrest report, does that refresh your recollection regarding the arrest of Martin Luis?

A: No.

Ask the officer to discuss the incidents in his/her memo book or daily activity report before and after the incident at issue

Once the officer has asserted that he/she does not remember the incident under investigation, the investigator should ask the officer to explain the circumstances of his/her assignments or jobs documented in a memo book or daily activity report both before and after the incident at issue. The investigator should also ask the officer what the officer was doing between the last job or assignment before the time of the incident and first job or assignment documented after the time of the incident. This technique is illustrated below. **Note that the investigator should not begin questions with, "Do you recall ...?" or "Do you remember...?" The investigator should simply ask the question and wait for the witness to be the one to use the words "I don't recall" or "I don't remember."**

A: I don't recall stopping any individual at the corner of Lexington and 103rd Street on that day matching the description you gave me or with that name.

Q: The incident under investigation allegedly occurred on April 15, 2015, at about 2:00 p.m. Again, what hours did you work?

A: Eight to four.

Q: The first job recorded in your memo book is at 10:05 a.m., a 10-52-a dispute call-at Madison Avenue and 97th Street. Did you respond to that call?

A: Yes.

Q: What did it involve?

...

Q: Between the time you left the domestic dispute at 1:45 p.m. and the time you issued the disorderly conduct summons at 2:20 p.m., what did you do?

Determining how the officer learned of the existence of the CCRB complaint

Once the officer is identified as a subject, or once the subject officer's command is identified as the subject command in the CTS (rather than the precinct in which the incident occurred), the subject command will learn that the complaint exists. The command in-turn may notify the officers involved that the complaint exists. Once the officer has asserted that he/she does not remember the incident under investigation, the investigator should inquire of the officer about the circumstances under which the officer became aware of the complaint and with whom, if anyone, he/she discussed it. Depending on how and when the officer became aware of the complaint, the officer's assertion that he/she does not remember the incident at issue may be suspect. The investigator may also consider asking the officer about the officer's relationship with the other officers involved in order to determine the likelihood that the officer did not discuss the case. It might not be plausible, for example, for an officer to deny having spoken to his/her partner of three years, whom he sees socially, about a serious complaint the officer knew about—a complaint that also involved his partner. This line of inquiry can be lengthy and will likely result in an objection and perhaps a refusal to respond, although at a hearing such questioning would be admissible. An example of such questioning can be found below:

Q: When did you learn that a complaint was filed in connection with Mr. Luis' arrest?

A: A few days after the arrest.

Q: How did you learn about it?

A: I can't remember.

Q: What did you do when you learned of the complaint?

A: Nothing.

Q: With whom did you speak about it?

A: I don't remember.

Q: When you learned of the complaint, did you become aware of what was being alleged?

A: Force.

Q: Did you become aware of what type of force was specifically alleged?

A: I don't remember.

Q: When you learned of the complaint, did you know against whom the complaint was made?

A: I can't remember.

Q: Did there come a time that you learned that Mr. Luis complained that you hit him repeatedly with a nightstick?

A: Yes.

Q: When was that?

A: I am not sure.

Q: Was it within a week of the arrest?

A: Probably.

Q: Was it within two weeks of the arrest, yes or no?

A: Yes.

Q: Have you spoken to your partner about the complaint?

Determining the officer's contact or potential contact with the court system

If a complaint stems from an arrest or the issuance of a summons, the arresting officer or summoning officer will usually be able to recall the summons or arrest. If the arresting or summoning officer does not, determine (through questioning) how active the particular officer is, i.e., how many summonses or arrests the officer has made in the last year. (The investigator may in advance of the interview determine a particular officer's activity by conducting a BADS query.) The idea behind this line of questioning is to ascertain whether the incident at issue should stick out in the officer's mind. The investigator should also ascertain whether the officer believes it is important, or a part of his/her job, to remember the circumstances surrounding summonses and arrests.

Officers who only assist in the issuance of a summons or in making an arrest may assert that they do not recall the event or arrest. The investigator should determine if the officer has been called to testify in court regarding the incident or has spoken to a prosecutor. The investigator should also

question the officer about the officer's past experiences in cases in which the officer merely participated in an arrest, i.e., did he/she as a participating officer speak to a prosecutor or testify in the past. Ultimately, the investigator will ask the officer whether it is important, as part of his/her job, to remember the circumstances surrounding summonses and arrests in case the officer is asked to testify about them.

Determining what other officers were present at the incident

Sometimes, the officer recalls the incident but cannot remember what other officers were involved and/or present. In this scenario, the investigator should show the officer the relevant roll call. After review of the roll call(s), the officer may be in a better position to identify the other officers.

REVIEWING DOCUMENTARY EVIDENCE WITH THE OFFICER

During the interview, the investigator should ask the officer what paperwork the officer prepared pertaining to the incident in question. The investigator may learn of reports that the investigator is not already aware of and will have to obtain. After the non-confrontational direct questioning, the investigator should review with the officer each report ostensibly prepared by the officer and confirm whether the officer authored the report. If any of the reports contain material inconsistencies with the officer's testimony, the investigator should then question the officer regarding the inconsistencies. The manner in which a witness should be questioned regarding inconsistent statements is discussed previously in the section entitled, "Direct Questioning—Areas that Must Be Covered that May Offend the Witness," as well as in the section entitled, "Relevant actions and speech that form the basis of the complaint; addressing omissions and inconsistencies."

QUESTIONING OFFICERS REGARDING DOCUMENTED INJURIES TO CIVILIANS

As discussed above but worth mentioning again, it is absolutely critical that officers be asked to explain how the civilian sustained a specific injury. If possible, the investigator should read the description of the injury from medical records, show the officer pictures of the injury, and ask the officer to explain how the injury was sustained.

QUESTIONING OFFICERS REGARDING THE IDENTITY OF CIVILIANS

As discussed above, police officers often do not know or cannot remember the names of the civilians with whom they interacted. The investigator should not presume such knowledge and should ascertain from the officer descriptions of the civilians with whom they interacted. Not only does this make it clear about whom the officer is speaking, it also aids in ensuring that the subject officer(s) is/are properly identified. If the investigator has photographs of any of the civilians, including arrest photographs, the investigator should show these photographs to the officer and ask if the officer recognizes the individual(s) and to distinguish each individual's role.

Special Interviewing Topics

GUIDELINES FOR OFFICER IDENTIFICATION USING PHOTOS

Positive identification of subject officers is a required element in every allegation of misconduct. That is to say, the identity of the named subject officer in each allegation must be proven by a preponderance of the evidence. Particularly in cases in which the investigator is recommending that the board substantiate one or more allegations, it is absolutely critical that the investigator utilize all investigative tools in order to properly identify subject officers. It is irresponsible and in many cases inexcusable to erroneously identify subjects of misconduct allegations. Thus, identifying subjects of allegations will routinely involve the use of photographic identification procedures, which investigators should uniformly administer and document.

Scheduling the interview—what to tell a witness who must view photographs

When arranging for a witness to view photographs, the investigator should inform the witness that the investigator wants the witness to view photographs of police officers in order to identify (the) officer(s) involved. If a witness asserts that he/she already provided identifying information to the CCRB, the investigator should advise the witness that individuals sometimes mix-up descriptions and that in order to prove sufficiently and correctly the identity of the officer(s) involved, it is necessary for the witness to view photographs. The investigator should not provide substantive information about the identity of the officers who will be depicted in the photographs.

Preparation

- **Procedure must be non-suggestive and completely preserved**
- Confirm with the civilian that they can identify the officer from a photo and are available to view photos. Photo arrays should not be shown if the civilian's response, combined with the context of the case, makes it highly unlikely that a positive identification would result. Such scenarios include cases where the civilian is unable to describe the subject officer or could only provide sparse details regarding his/her appearance, or if the civilian indicates that he/she would be unable to identify the subject officer. A photo array should not be shown if the civilian indicates that they absolutely cannot identify the subject officers from photos. Consult with supervision if there is a question regarding the propriety of conducting a photo viewing.
- If you have four or less possible subjects – use a **photo array**.
- If you have five or more possible subjects – show **single photos**.
- Exceptions:
 - If you have a confirmed, closed universe of officers, you can show single photos when there are less than five or more possible subjects. For example: Mediation has been accepted and memo books confirm that only three officers interacted with the civilian, but due to similarities in appearance of the officers the one subject officer can only be confirmed through a photo array. In such cases you do not have to show

three separate photo arrays and can show three single photos of the officers without fillers.

- If you have a quasi-confirmatory universe of officers, you can show single photos without fillers. For example: Fleet Services has confirmed that the officers' vehicle involved in the incident is assigned to a Narcotics unit, but the Movement Log fails to identify the specific officers assigned to that vehicle. In such a case you can show all of the possible subject officers from that unit without fillers or multiple photo arrays.
- An IA should be made documenting the reason(s) for using one of these exceptions.
- Before making document requests to MAS for photos, consult with supervision to confirm whether a photo array or a single photo viewing is appropriate for the case at hand.
- Only photos obtained from MAS are to be used in photo viewings; do not use photos found in past CCRB cases on EDMS.
- Only use color pictures.

For Every Photo Viewing

- Only one investigator should lead the viewing of photos. A second investigator should be present only for training purposes or for viewings conducted in the field. If a second investigator sits in on the viewing, it must only be to observe.
- Before showing the photos to the civilian, tell him/her that the subject officers may or may not appear in any of the photos to be shown. Also cover the fact that hair styles, facial hair, and the weight of the officers in the photographs may be different from the appearance of the officer during the incident, and to disregard any differences in the color or appearance of the photos as incidental variations occurring during printing.
- Tell each witness not to discuss anything about the photo viewing with any other witness to the incident.
- Instruct the civilian to look closely and carefully at each photo.
- Do not use an audio device to record the viewing of the photos or the civilian's comments regarding the photos.
 - If the civilian indicates a desire to provide new or substantive information regarding the incident during the photo array, go on the record at the conclusion of the photo viewing to have the information recorded. Such recordings need to be properly labeled by starting the recording with a recitation of the case number, investigator(s) and civilian present, date/time and location of the statement being provided, and the date/time and location of the incident being covered. Additionally, the civilian needs to provide their name, date of birth and address on that recording.
- At the conclusion of photo viewings, all of the photos shown to the civilian must be placed in the Primary Case File in the order in which they were shown. The pedigree photos of the possible subject officers should be placed in the Primary Case File behind these photos.
- The CCRB Photo ID Worksheet must be prepared **during** the course of each and every photo viewing to ensure that the proper procedures are maintained. This worksheet must be included in the Primary Case File before the photos that were shown during that viewing.

Single Photos Specifics

- Fillers should be included in the single photos shown the civilian, at a ratio of at least one filler per one possible subject officer, unless an exception noted above applies.

- ### Photo Array Specifics

- ### Positive Identifications

- ### WITNESSES WHO DO NOT SPEAK ENGLISH

It is important to determine prior to the interview whether the witness requires an interpreter. The investigator must determine in what language the witness can best express him/herself and in what language the witness can best comprehend what is being said to him/her. If the answer to one of these two questions is not English, the investigator should arrange to use an

interpreter. Unless absolutely necessary, the investigator should not utilize as an interpreter a friend or relative of the witness.

A list of investigators who can conduct interviews in a language other than English is regularly distributed to all staff by e-mail and can be found on the Investigations Division computer drive. The investigator's first choice for an interpreter should ideally be another investigator. If there is no investigator who can act as an interpreter, the assigned investigator must plan in advance and use an outside interpreter.

To contact a non-English speaking witness over the telephone, the CCRB has an account with the AT&T language line service. The telephone number for the language line and the necessary passwords can be found on the Investigative Drive.

The CCRB also has a TTY/TDD device, located in the complaint intake room, for communicating with hearing impaired individuals. Its telephone number is 800-223-1766.

The CCRB has contracts with two interpreting services: 1) The New York Society for the Deaf (sign language); and 2) Legal Interpreting Services. To arrange for an interpreter, contact the Budget and Purchasing Office. For an interpreter of sign language, the New York Society for the Deaf requires two weeks' notice. For all other languages, please give as much advance notice as possible.

WITNESSES WHO ARE JUVENILES

Under New York State criminal statutes, an individual sixteen years old and older is considered an adult. See Penal Law § 30.00(1). Additionally, a child younger than nine years old may not testify under oath unless a court is satisfied the child can understand the oath. Even if the child does not understand the oath, the child can give unsworn evidence if the witness possesses sufficient intelligence and capacity to justify receipt of the evidence, but a defendant cannot be convicted based upon such testimony alone. See Criminal Procedure Law § 60.20. These legal principles are the foundation of the CCRB's policies regarding juveniles.

For witnesses who are younger than sixteen years old, the investigator must obtain the consent of a parent or guardian before conducting an interview. When interviewing witnesses who are younger than nine years old, the investigator should record and question the child to determine whether the witness understands what it means to swear or affirm to tell the truth. An example of such an inquiry follows:

Q: What is your name?

Q: How old are you?

Q: Where do you live?

Q: Whom do you live with?

Q: Do you go to school?

Q: What is the name of your school?

Q: What grade are you in?

Q: What subjects are you taking?

Q: Do you know the difference between telling the truth and telling a lie?

Q: What does it mean to tell a lie?

Q: Is it right or is it wrong to tell a lie?

Q: What happens if you tell a lie?

Q: If I said, "This book is black," would that be the truth or a lie?

Q: If I said, "Your name is _____," would that be the truth or a lie?

Q: What would happen if someone asked you a question and you told a lie?

Q: Do you know that it is very important to tell the truth here?

Q: When you are asked questions here, do you promise to tell the truth?

If the child does not sufficiently convey an understanding of what it means to tell the truth, the investigator should refrain, at the conclusion of the interview, from asking the child to sign a verification form.

WITNESSES WHO ARE INCARCERATED

Logistical Concerns

Gaining access to prisons within the city varies over time and by the penal institution. Generally speaking, investigators must seek clearance from the prison prior to arriving. This typically involves a written request, detailing the incarcerated person's name, NYSID, and booking number as well as all names of investigators coming to the prison and a list of digital devices being transported into the prison. Visits to prisons can be time consuming due to various bureaucratic delays, so it is important that the investigator call the prison in advance to ensure that all of the necessary documents were received and that clearance has been granted. Investigators should make sure to note the name of the person with whom they obtained clearance should there be any trouble with their clearance upon arrival.

If the prisoner is incarcerated on Rikers Island, the investigator may use the video conference terminal located in the interview room area. This terminal allows investigators to connect with prisoners via video to conduct the interview. The verification form and all other pertinent documents that require a signature will then need to be mailed to the prisoner or taken to Rikers Island for signature. This process, as with all of the processes associated with interviewing incarcerated individuals is liable to change based on the penal institution.

If the prison does not allow for a recording device, the investigator must take copious notes. [REDACTED]

[REDACTED] To obtain a sworn statement, following the interview the investigator should draft by hand a concise summary of what the witness stated; the summary should detail the specific

allegations witnessed by the interviewee. The investigator should read back that statement to the witness and have the witness sign the statement as well as the verification form. The investigator should then sign the statement and verification form as a commissioner of deeds. In cases in which the investigator cannot record the interview, it is also critical that the investigator prepares the interview report as quickly as possible.

Obligation to notify incarcerated witness' attorney

Out of a concern that incarcerated witnesses frequently make inculpatory statements to CCRB investigators yet have limited access to their attorneys, in March 1998, the board decided that when the contemplated CCRB interview concerns the same incident for which the complainant or witness is incarcerated and the criminal charges are open or the conviction is under appeal, the CCRB must first notify the individual's attorney either by phone or in writing. [REDACTED]
[REDACTED]
[REDACTED]

The investigator should not suggest whether the individual should or should not be interviewed but should merely inform the attorney that it is our intent to interview the incarcerated individual (and provide a date if you have one). If the attorney does not object or does not respond within a reasonable period of time, the investigator can proceed and conduct the interview. If the attorney does object and the incarcerated individual is the complainant or victim, suggest to the defense attorney that the complaint be withdrawn. Let the attorney know that the board may reopen the case at the request of the complainant or victim. If the individual is a witness whose attorney objects, the CCRB will not conduct the interview or the CCRB will wait (a reasonable period of time) to conduct an interview of the incarcerated individual after his/her case is closed (and not under appeal). The assigned investigator should not allow any case to remain open indefinitely, because it can take months to dispose of a criminal case.

As delineated below, there are a number of ways to identify the defense attorney in a criminal case. To find out this information, however, the investigator must have the docket number and/or indictment number, arrest number and/or an individual's NYSID number. In every case, the court file contains a notice of appearance prepared by the defense attorney that contains the attorney's name, address, and telephone number. To obtain this information through the courts, access the Office of Court Administration database at the CCRB or call the respective court clerk, who will research the information by using the same OCA database. If the database does not contain the defense attorney's information, the clerk can look inside the actual court file. The investigator should understand that indicted cases are in the supreme court; unindicted felonies, misdemeanors, and violations are in criminal court.

Services for indigent defendants

Another way to determine the name, address, and phone number of the attorney assigned to defend an individual is to check with the organizations that provide legal services to indigent defendants. The Legal Aid Society has a contract with the city to provide such services in all five counties. Recently, the city has signed contracts with other organizations, the names and contact information of which can be found on the CTS's Telephone Directory.

Appellate courts

When a witness is incarcerated in a New York State prison, the investigator should check with the Appellate Division in which the prisoner was prosecuted to find out if the prisoner's conviction is under appeal. If so, the investigator should notify the defense attorney handling the appeal. In New York, the trial courts are in the supreme court, the first court in which a defendant files an appeal is called the Appellate Division, and the highest court in the state (which handles appeals) is called the Court of Appeals.

ⁱ Since the board adopted its rules in 1993, the department has changed the amount of time required to notify a member of service that an interview will take place. As of January, 2000, members of the service other than those of the rank of police officers must be given only a reasonable period of time to obtain and confer with counsel prior to questioning. Members of the service in the rank of police officer who are subjects must be given two business days notice; witness police officers must be given up to four hours of notice. Thus, the CCRB rules require that officers be given more notice than they are presently entitled to under the Patrol Guide.

Chapter Five: Investigating and Analyzing Search and Seizure Allegations

Framework for Investigating and Analyzing Search and Seizure Allegations

Complaints that raise search and seizure issues are the most complex and difficult that investigators are assigned. While this chapter discusses the broad principles underlying the primary search and seizure issues that investigators confront, the purpose of this chapter is not to summarize search and seizure law. Its purpose is to provide investigators a guide by which they should investigate and analyze such complaints, as set forth below:

Step 1 – Issue-spotting: Identify the search and seizure issue(s) and related allegation(s);

Step 2 – Research relevant law and procedures: research Patrol Guide procedures and legal principles applicable to the search and seizure issues;

Step 3 – Obtain relevant facts: determine the facts necessary to resolve the search and seizure issues, and obtain those facts through relevant documents, officer and civilian interviews, and other evidence;

Step 4 – Conduct analysis and arrive at findings: after gathering the relevant facts, determine whether the alleged search and/or seizure occurred, and if so, whether it was proper. You will conduct this analysis by applying the relevant legal principles and Patrol Guide procedures to the facts you have gathered through your investigation.

This chapter outlines each of these steps.

Step One: Identifying Search and Seizure Issues and Related Allegations

As in any other investigation, the investigator must identify the specific issues raised by a civilian complainant or witness in his or her account of the incident, and then plead the related allegations. Spotting search and seizure issues as early as possible in the investigation is essential because it allows the investigator the opportunity to research relevant legal principles and to ensure that the relevant facts are gathered in document requests and thorough interviews.

Search and seizure allegations fall under the CCRB's abuse of authority jurisdiction. Examples of search and seizure allegations falling within CCRB's jurisdiction include: (1) street encounters between a civilian and police officer, where a civilian is questioned, stopped, frisked, and/or searched by an officer; (2) encounters where a civilian is driving or a passenger in a vehicle that is stopped and/or searched by a police officer; (3) encounters where police enter a civilian's place of residence or business and/or conduct a search while there; (4) certain situations where a civilian is arrested or given a summons by a police officer; and (5) strip searches and other intrusions of civilians by police officers.

In order to properly identify the issues and allegations raised by a complaint, investigators should first identify the various discrete acts about which the civilians have complained. Note that civilians may describe their experiences using the same terms as the NYPD or the law does. For example, a civilian may allege that, while he was walking down the street, an officer walked up to him, asked him whether

he carried any drugs, put his hands in his pockets, and then walked away without arresting him or issuing a summons. It is the job of the investigator to assess this narrative and identify the potential issues and allegations raised as a “question,” “stop,” and “search.”

Step Two: Research the Relevant Law and Procedures

Upon identifying the general search and seizure issues and allegations, the investigator should research the circumstances under which the act alleged is lawful. These circumstances are set forth in applicable law (statutes, court decisions) and applicable NYPD Patrol Guide provisions. The purpose of conducting this research is to allow the investigator to identify the relevant facts to be gathered during the course of the investigation. The investigator should understand what the issues are and the facts that must be obtained to resolve these issues prior to conducting interviews of both civilians and police officers. The investigator should conduct further research as the issues become clearer during the course of the investigation. The investigator should never wait until it is time to prepare the closing report to begin researching search and seizure issues.

For example, a civilian may complain about police officers who entered and searched her apartment in the early morning hours. If this act occurred as alleged, the investigator will ultimately have to determine if the officer lawfully entered the apartment. From the broadest perspective, the investigator will have to research when an officer is legally entitled to enter a civilian’s residence. The investigator will have to know that an officer can enter a residence: if the officer possesses an arrest warrant (for a person residing at the apartment) or search warrant for that address; if the officer obtained consent of an occupant (capable of providing consent); if exigent circumstances or emergency circumstances exist; or if the officer is in hot pursuit of a suspect who fled inside the apartment. The investigator will also have to understand the basic outline of what constitutes, for example, consent, emergency or exigent circumstances, and hot pursuit.

As the investigator obtains more information about the case, the investigator may be able to narrow the issues raised by the allegation. For example, from conducting interviews and/or obtaining documentary evidence, it may become clear that what is at issue is whether consent justified the officer’s entry. Proper identification of the issue(s) will depend on the investigator’s execution of step two—researching when an officer is entitled to take a specific action under the applicable law and NYPD procedures.

This section focuses on what legal issues are raised by the most common CCRB search and seizure allegations and where the investigator can research them.

UNDERSTANDING WHAT SEARCH AND SEIZURE LAW IS

Restrictions on law enforcement officers’ abilities to conduct searches and seizures stem from the Fourth Amendment of the United States Constitution, which provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized.

Interpretations by courts of the Fourth Amendment, including the United States Supreme Court, have defined over time what constitutes unreasonable searches and seizures, what constitutes probable cause, and when lawful searches and seizures can be conducted in the absence of a warrant. These court decisions arise mainly out of disputes about whether physical evidence seized by law enforcement officers is admissible in court against defendants. In addition to the protections afforded to them by the United States Constitution, individuals in New York are also governed by New York State common-law and the New York State Constitution, in which there is a provision identical to that of the Fourth Amendment of the United States Constitution.

Federal law, i.e., the law stemming from interpretation of the Fourth Amendment, sets a minimum standard of protection for citizens throughout the United States. Individual states can choose to impose greater restrictions on police activity through their state constitutions or common law. In several areas of search and seizure law, the New York State courts have imposed greater restrictions on local police activity than are imposed on federal law enforcement. Subsequently, the law governing the activity of New York City police officers is in some instances, including “street-stop” cases, more restrictive than the law governing federal and other states’ law enforcement officers. By necessity, the New York City Police Department Patrol Guide’s procedures are consistent with New York State law.

In a criminal context, generally only an individual who has a personal and legitimate expectation of privacy in the area or object searched has legal standing to contest the legality of the search or seizure. However, in assessing search and seizure allegations, the investigator should, under step 4, concern him/herself solely with the legality of the search. Whether the particular complainant or civilian witness would have legal standing to contest the search or seizure in a criminal court is irrelevant in terms of assessing whether the alleged police action conformed with the law.

OVERVIEW OF RESEARCH RESOURCES

The investigator has a number of resources at CCRB by which he/she can determine when an officer is permitted to conduct a specific search or seizure. They include:

- 1) Squad Managers and Squad Attorneys – The investigator should always consult with his/her team supervisor(s) and/or manager and/or team attorney when there is a search and seizure issue;
- 2) Patrol Guide Procedures – Patrol Guide procedures and other reference material applicable to most search and seizure allegations are detailed in this chapter. (For all CCRB FADO allegations, applicable Patrol Guide procedures and other reference materials are delineated in the chapter regarding the drafting of allegations and recommendations.);

- 3) Judicial decisions – The investigator can gain a greater understanding of particular issues by examining judicial decisions (by seeking out the supervisors and attorneys in the agency who have access to legal databases such as LexisNexis). The investigator should also access the Investigations Drive for the file titled, “Court Case Law” when researching precedent for various search and seizure scenarios;
- 4) New York State Statutes – The investigator should consult any applicable New York State Penal Law and Criminal Procedure Law statutes. For example, when an officer states that he or she approached a civilian due to a reasonable suspicion that the civilian committed a crime, the investigator should be aware of the definition of that crime in the Penal Law. For allegations of (retaliatory) arrest or summons, the investigator must review the statute(s) pursuant to which the individual was arrested or issued a summons;
- 5) Additional Source Materials such as Kamins’ New York Search & Seizure and Other Treatises – The investigator may use Kamins’ and other treatises as a guide to relevant legal principles, but SHOULD NOT rely on the cases cited in Kamins without first reading the underlying case. If an investigator encounters an unfamiliar legal issue or question, the investigator should consult a Squad attorney in addition to consulting Kamins;
- 6) Administrative Judicial Decisions – The investigator should read administrative judicial decisions issued by the Deputy Commissioner of Trials (“DCT”) that are relevant to the specific issues; and
- 7) Department Training Materials – The investigator should examine relevant department training materials including but not limited to curriculum from the Police Academy, curriculum from the Citizen’s Police Academy, and Legal Bureau updates and bulletins.

ALLEGATIONS STEMMING FROM STREET ENCOUNTERS

Based upon civilian witnesses’ accounts, the investigator will have to determine what actions the police officers allegedly committed. Then, the investigator will have to research when an officer is entitled to take that specific action.

Every day throughout New York City, there are numerous contacts between the public and the police. Most of these encounters concern non-enforcement matters, such as directing traffic, giving directions, and providing aid. These interactions are relatively nonintrusive and seldom produce objections from the public or courts. There are other contacts, however, which involve the investigation of suspicious activity and often require more intrusive police action. These types of police-citizen encounters range from noncustodial questioning, to more intrusive investigative steps involving stopping, frisking, and/or searching of a suspect, to the most intrusive encounter, the arrest of an individual.

In interpreting federal and state constitutional provisions, the courts have fashioned rules to balance

the safety of officers, the public interest in permitting officers to investigate suspicious activity, and the individual's right to be free from unreasonable police intrusions. The guiding legal principle is that any police action must be reasonable in light of all the facts and circumstances known to the officer. The facts and circumstances of a particular case will determine the nature and degree of police action that is permissible. In other words, the level of information that a police officer possesses regarding a particular individual dictates the level of intrusion to which the citizen may be subjected by the officer. Although this is an easy principle to state, there are few bright-line rules to guide officers. Police action that meets with court approval under one set of circumstances may produce a different result with only a slight change in the underlying facts.

Under New York law, some citizen-police encounters that fall short of Fourth Amendment seizures and protections (the right to request information and the common-law right of inquiry, which are discussed below) still implicate privacy interests; New York courts have adopted rules to protect the individual from arbitrary or intimidating police conduct. In People v. DeBour, 40 N.Y.2d 210 (1976), the holding of which was reaffirmed in People v. Hollman, 79 N.Y.2d 191 (1992), and numerous other cases, the New York Court of Appeals defined four levels of police-citizen street encounters and what degree of suspicion justifies each level of intrusion. Each tier is summarized in the chart below and described in detail afterwards.

CONFIDENTIAL

LEVEL 1 REQUEST FOR INFORMATION	LEVEL 2 COMMON LAW INQUIRY	LEVEL 3 STOP, QUESTION AND POSSIBLY FRISK
An objective credible reason is required to approach. Suspicion of criminality is not required. Only non-accusatory questions about the reason for the approach are permitted. MOS CANNOT seek consent to search; there is no basis to search at Level 1. The subject is free to refuse to answer questions and walk or even run away. MOS can continue to observe but may not pursue. Force may not be used to detain subject. Note: Clearly false answers to MOS's non-accusatory questions may escalate the encounter.	Requires a founded suspicion of criminality. Focuses on whether criminality is afoot. Questions may be pointed and accusatory. MOS may seek consent to search; consent must be voluntary. The subject is free to refuse to answer questions and walk away. However, flight in combination with facts indicating the person is involved in criminality may elevate the encounter to a Level 3. Force may not be used to detain the subject. Note: Absent exigent circumstances, such as a bomb threat or a DWI, a report of possible criminal activity from an anonymous source will only support a Level 2 approach (not 3) unless the MOS is able to corroborate the report with his/her own observations or other information. Note: False or evasive answers to MOS's questions may escalate the encounter.	Requires an individualized reasonable suspicion that the subject is committing, has committed or is about to commit a felony or Penal Law misdemeanor. Questions may be pointed and accusatory. MOS may seek consent to search; consent must be voluntary. In addition, if MOS also has a reasonable suspicion that the subject is armed and dangerous, MOS may FRISK and if MOS feels an object he/she reasonably suspects is a weapon, he/she may search for and remove the item. The subject is not free to terminate the encounter and may be detained for a reasonable period of time in order to confirm/dispel suspicion. A stop occurs when a reasonable person would not feel free to disregard the officer and walk away. MOS is permitted to use reasonable force to stop and question the subject. Note: a Stop Report Worksheet must be prepared for all Level 3 stops. Note: If suspicion that suspect is armed and dangerous is based solely on a bulge indicative of a weapon, confine frisk to the area of the bulge. If the suspicion that person is armed and dangerous arises from (1) suspicion of a violent crime, (2) the statements of witnesses, victims, or the suspect, or (3) other facts and circumstances of the encounter, then frisk may extend as far as necessary to confirm or dispel the presence of a weapon, up to a head-to-toe frisk. If the suspect possesses a portable container, such as a bag, the MOS may "frisk" the portable container if MOS has reasonable suspicion that the person is armed and dangerous and the weapon could be within the portable container. If the container is soft, MOS should pat down the bag for possible weapons. If it is a hard container, MOS may open it.
LEVEL 4: Arrest. Requires probable cause to be believe that (a) an offense was committed and (b) the subject committed it. Reasonable force may be used to effect an arrest. A Miranda waiver must be lawfully obtained before questioning but is not required for pedigree information. Search incident to arrest is permitted as well as any required inventory searches. See Authority to Arrest.		

Level 1: Request For Information – (CCRB allegation: Question)

A request for information is the least intrusive level of interference with a civilian. The New York State Court of Appeals has concluded that a request for information involves basic, nonthreatening questions regarding, for instance, identity, address or destination. An officer has the right to request information if he/she “has an objective credible reason not necessarily indicative of criminality.” The request cannot be “arbitrary, based on whim, curiosity, caprice or a desire to harass.” The individual being questioned under these circumstances can refuse to respond and is free to leave. The officer must make the request for information in a manner that would not lead an innocent person to believe they are the target of a criminal investigation. With only an objective credible reason to request information from an individual, an officer may not request consent to search the individual’s person or bags.

In New York City, many residential buildings are owned by the city and operated by the New York City Housing Authority (NYCHA). In addition, a variety of privately-owned residential buildings belong to a program called the Trespass Affidavit Program (known as “TAP buildings”), through which police officers may enter the private buildings for the purpose of removing intruders. In NYCHA and TAP buildings, police officers are permitted approach individuals when they have an objectively credible reason to do so. Mere presence in a NYCHA or TAP building does not provide officers with an objectively credible reason to approach the individual.

Upon finding that a police officer requested information from an individual, the investigator will have to determine through investigation whether the officer had an objective credible reason for doing so based on observable conduct and/or hearsay information.

Level 2: Common-Law Right Of Inquiry – (CCRB allegation: Question)

An officer may approach an individual and conduct extended, accusatory questioning that focuses on the possible criminality of the person approached. For example, an officer may ask an individual if they possess a weapon or drugs. This type of “common law inquiry” requires the officer to possess a “founded suspicion that criminality was afoot,” or have a “present indication of criminality based on observable conduct or reliable hearsay information.” Nervousness alone is not an indication of criminality.

The individual being questioned, under these circumstances, can refuse to respond and is free to leave.

If an officer possesses a “founded suspicion” that an individual is engaged in criminal behavior, the officer may request consent to search the individual’s person or bags. If an officer does not possess a founded suspicion of criminality, he may not request consent to search. Please refer to the section on consent below on Searches of Person for further guidance on assessing whether consent as voluntary.

Upon finding that a police officer conducted a common-law right of inquiry, the investigator will have to determine through investigation whether, based on the totality of the circumstances, the officer had a founded suspicion that criminality was afoot, or had a present indication of criminality based on observable conduct and/or hearsay information.

At this level of encounter, some degree of detainment is permissible. For example, during a Level 2

engagement, officers are allowed to walk with a person to an apartment in a NYCHA building. However, the investigator should always consult with team supervision and/or the team attorney for any Level 2 encounter with detainment to determine if/when that detainment reaches the level of a Level 3 “stop.”

Level 3: Stop – (CCRB allegation: Stop)

A police officer can forcibly “stop” an individual if the officer has “reasonable suspicion” that the person is committing, has committed or is about to commit a crime. Reasonable suspicion is the amount of information necessary to make an ordinarily prudent person under the circumstances believe that the person being stopped is involved in a crime. In assessing reasonable suspicion, the investigator will have to review the totality of the circumstances, including the officers’ observations of the civilian’s behavior, clothing, physical description, and location; the time of day; the location of the encounter; the nature of the suspected criminal activity; and any other relevant factors.

In effecting the stop, the officer is entitled to pursue the individual and use reasonable force to stop the individual; the officer can draw his/her weapon and take other reasonable self-protective measures. When there is reasonable suspicion to conduct a stop, the individual stopped is not free to leave.

An officer’s interaction with a civilian is considered a “stop” when a reasonable person would have believed, under the circumstances, that the officer’s conduct was a significant limitation of his or her freedom. In New York, a “stop” can take many forms, including physically subduing an individual, blocking the path of a person’s car with a police car, confining the occupants of an automobile so that they cannot leave, subjecting an individual to certain physical contact, ordering an individual to comply with certain police directives, and ordering an individual to pull his car over while the police use their turret lights and sirens.

An officer who has reasonable suspicion to stop an individual may seek consent from that individual to search the person and/or his possessions.

Level 3: Frisk – (CCRB allegation: Frisk)

In certain circumstances, an officer conducting a “stop” may also conduct a “frisk” of an individual. It is important for investigators to analyze the justification for the “frisk” independently of the justification for the “stop,” because officers who possess reasonable suspicion to stop an individual may not always be justified in conducting a frisk of that individual.

An officer can conduct a frisk of an individual if the officer has an independent and reasonable suspicion that the individual is armed and dangerous. The officer can also conduct a frisk of an individual if the officer has reasonable suspicion to believe the individual is committing, has committed or is about to commit a violent crime. Under no circumstances should an allegation of an improper frisk be exonerated where the officer had no reasonable suspicion of physical injury or the presence of a weapon.

Relevant factors in determining whether there is reasonable suspicion that the individual is armed and dangerous include, among others, the substance and reliability of the report that brought the officers

to the scene, the nature of the crime that the police are investigating, the suspect's behavior, the shape, size, and location of any bulges in the suspect's clothing, the nature, speed, and sharpness of any motions made toward the bulge, and the officer's thoughts during the incident about what the bulge was. A bulge in an individual's waistband is insufficient in itself to justify a frisk.

A "frisk" is defined as a "pat-down" of the outer clothing of a suspect. (Certain actions, such as reaching into an individual's pocket, go beyond a "frisk" and constitute a search requiring probable cause, described further below.) If an officer possesses reasonable suspicion to frisk an individual's person, he or she may also "frisk" or feel a suspect's personal items capable of concealing a weapon within the suspect's graspable reach. A frisk is also typically limited to the area of an individual's body or graspable area that caused the officer to fear for his safety. For example, if a bulge is seen in a jacket pocket, the officer cannot search an individual's rear pants pockets. Upon reasonably suspecting that an object the officer feels is a weapon, the officer is entitled to retrieve the object.

Police officers may frisk (not search) an individual who has been issued a summons, but only if the police officer reasonably suspects that the suspect is armed and dangerous. The issuance of a summons alone does not justify a frisk.

In addition, an officer may conduct a pat-down frisk as routine safety measure prior to transporting a suspect in a police vehicle for a show up identification.

To research the issues raised by an alleged stop and/or frisk, the investigator should review relevant cases in the Investigations Drive, and review the training material in the Investigations Drive. Please note that the NYPD has extensively revised the relevant Patrol Guide section 212-11 (stop and frisk).

Level 4: Arrest – (CCRB allegation: Arrest or Summons)

An officer may arrest or issue a summons to an individual he/she has probable cause (or reasonable cause) to believe the individual has committed a crime or violation. Probable cause requires, not proof beyond a reasonable doubt or evidence sufficient to warrant a conviction but "evidence or information which appears reliable and discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it." Probable cause can be established in several ways, including information from an eyewitness or victim of a crime that identifies an individual as the perpetrator of the crime, or an officer's direct observation of an individual engaged in criminal activity or in the possession of contraband (drugs, weapons). In addition, an arresting officer possesses probable cause when he acts on the basis of information supplied by another officer, which itself or together with information already known to the arresting officer establishes probable cause; or the arresting officer arrests a defendant at the direction of another officer who has probable cause (the "fellow officer rule"). If the basis for an arrest arose from information supplied by a civilian informant or anonymous source, please speak to a Squad Supervisor or Squad Attorney as these situations are analyzed under a more complex legal standard.

An officer does not need an arrest warrant to arrest an individual in public. Upon finding that a police officer issued a summons to or arrested an individual, the investigator will have to determine through investigation whether the officer had probable cause to do so based on the totality of circumstances.

To research the issues raised by an arrest or issuance of a summons, the investigator should examine Patrol Guide procedure 208-01 (law of arrest), Criminal Procedure Law 140.05 and 140.10 regarding arrest without a warrant, and the provisions in the Penal Law and/or other statutes under which the arrest was made or summons issued.

Level 4: Search of a person and his/her possessions – (CCRB allegation: Search)

A search can take different forms, including ordering an individual to empty their pockets; searching an individual's pocket; reaching into an individual's pocket; placing a hand inside an individual's waistband; and opening an individual's purse, backpack, or bag. A police officer may search an individual's person and/or his possessions based on one of a few different justifications:

1. **Search warrant**: an officer may possess a search warrant, issued by a magistrate upon a showing of probable cause, to search an individual and/or his possessions.
2. **Search incident to arrest**: Once the officer has probable cause to arrest, the officer is entitled to conduct a search incident to that arrest (exclusive of some Vehicle and Traffic Law violations). There are three requirements for a search to be justified under this doctrine: (i) there must be an *actual* arrest, not simply the existence of probable cause that could have led to an arrest but did not; (ii) the search must be contemporaneous with the arrest (but can precede it if, at the time of the search, the officer intended to arrest the individual); and (iii) searches incident to arrest must be limited to the area within the arrestee's immediate control, or grabbable area.

Containers in arrestee's possession can be searched only if officers can show it was necessary to protect safety of the public or officer, or to protect evidence from destruction or concealment. **Cell phones** cannot be searched without warrant, unless there are exigent circumstances.

If an officer issues an individual a summons instead of making an arrest, the officer may not search the individual. Police officers may frisk (not search) an individual who has been issued a summons, but only if the police officer reasonably suspects that the suspect is armed and dangerous. The issuance of a summons alone does not justify a frisk.

3. **Consent searches**: an officer may gain consent from an individual to search him and/or his possessions. Consent must be voluntary and cannot be the product of coercion, whether explicit or implicit. Police coercion can take various forms: intimidation; threat of arrest or damage to property if individual refuses consent; giving an impression that individual can't refuse consent. Consent must be reviewed using a totality of the circumstances test, reviewing factors such as whether the individual was in custody; the background of individual giving consent (age, criminal history); whether the individual was uncooperative or evasive with authorities; and whether the individual was advised of his right to refuse consent.

Consent to Search Form: In certain circumstances, officers are required to obtain a signed consent to search form from a civilian, and their failure to do so may be noted as "Other Misconduct." Pursuant to NYPD Operations Order 29, officers assigned to investigatory commands/units, including the Detective Bureau and O.C.C.B., are required, when they

believe seizable property or wanted persons are present at a particular location, to approach the legal owner or lawful custodian of an address, vehicle or item to be searched, request that they sign a Consent to Search form PD541-030, and notify their supervisor that the form has been signed and the search is to be conducted. Officers must explain to an individual that they have the right to refuse a search and to request that a warrant be obtained to conduct the search. Officers are instructed that consent must be voluntarily, knowingly, and intelligently provided, and that threats and promises cannot be used to secure consent. Members are told to immediately cease the search if consent is withdrawn prior to the completion of the search, and then to seek a search warrant.

4. Administrative or inventory searches: a search of an individual and/or of his/her possessions may also be justified because it is an administrative search (e.g., upon entry to a courthouse), an inventory search (of all property being taken into custody and vouchered by the police). Inventory searches: (1) cannot be “a ruse for a general rummaging in order to discover incriminating evidence,” and (2) must be “conducted pursuant to an established procedure clearly limiting the conduct of individual officers that assures that the searches are carried out consistently and reasonably.”

Note that once an individual has abandoned property, the individual no longer possesses an expectation of privacy in that property and it may be searched by an officer without any probable cause. Property is abandoned “when the expectation of privacy in the object or place to be searched has been given up **voluntarily** and **knowingly** discarding the property.” Examples of abandonment may include dropping or throwing a bag or item away, or saying that one doesn’t own an item; however, investigators should consult further with a Squad Attorney.

To research the issues raised by a search of a person or that person’s possessions, the investigator should examine cases in the Investigative Drive, and Patrol Guide procedures 208-05 (arrest – general search guidelines) and 208-03 (arrests – general processing).

ALLEGATIONS STEMMING FROM A STRIP-SEARCH

Strip-search – (CCRB allegation: Strip-search)

Officers may conduct more intrusive searches of an individual’s body in certain, limited circumstances. Case law has distinguished among three types of body searches. A “strip search” occurs when a person disrobes so that officer can visually inspect person’s body or undergarments. An officer must have reasonable suspicion that an individual is concealing weapons or contraband on his person in order to perform a strip search. Reasonable suspicion must stem from a specific, factual basis arising from the circumstances of the arrest, the crime charged and the particular characteristics of the arrestee. Of necessity, this determination includes an examination of the individual’s behavior during the incident arrest. Although prior arrest and search history may be taken into account in determining whether such reasonable suspicion exists, they can never be considered to the exclusion of the circumstances of the current arrest. Patrol Guide section 208-05 outlines factors that should be considered in determining whether an appropriate basis exists for a strip-search include the nature of the crime, arrest circumstances, subject’s reputation, acts of violence, unaccounted hits on

magnetometers or walk-through metal detectors, and any discoveries or information from previous searches of the same individual or others arrested with him/her.

Patrol Guide section 208-05 also contains rules that must be followed when officers conduct strip searches. A strip search must take place inside an NYPD facility, and they cannot be performed routinely upon arrest. The arrest officer must obtain approval from a supervisor in order to conduct a strip search, and it must be conducted in a reasonable manner (performed by the same gender, in a secure, private area, and only in the presence of those necessary). No strip search can be performed if officers decide to issue a summons or void an arrest.

A “visual body cavity search” occurs when an officer looks at arrestee’s anal or genital cavities without any physical contact or intrusion. In order to conduct this type of search, an officer must have specific, articulable factual basis supporting reasonable suspicion to believe arrestee secreted evidence inside a body cavity and the visual inspection must be conducted reasonably. A “manual body cavity search” is a physical intrusion beyond body’s surface, such as removal of an object from a cavity, or insertion of instrument into cavity. For this type of search, an officer must possess a warrant unless exigent circumstances reasonably prevent the police from seeking prior judicial authorization. Allegations of visual or manual body cavity searches must be referred to IAB.

For further guidance, investigators should review caselaw on the Investigations Drive, discuss with their Squad Supervisor or Attorney, and consult Patrol Guide procedure 208-05.

ALLEGATIONS STEMMING FROM VEHICLE STOPS

Stop of a Vehicle – (CCRB allegation: Vehicle Stopped)

The right of an officer to stop a moving vehicle is analogous to an officer stopping or arresting a civilian during a street encounter. An officer is permitted to stop a moving vehicle when she: 1) has probable cause that there is or has been a violation of the Vehicle and Traffic Law (either because of defects in the vehicle or because of a moving violation); or 2) reasonably suspects that one of the occupants of the vehicle is committing, has committed or is about to commit a crime. An officer is not permitted to stop a moving vehicle to conduct a request for information or a common law right of inquiry. The investigator should note, however, that a stop of a moving vehicle may also be justified because it is an administrative stop (e.g., a DWI roadblock) conducted pursuant to non-arbitrary and uniform procedures or based upon consent (e.g., a sticker affixed to taxi cabs or liveries).

Because vehicle stops are potentially dangerous to the police officer, the officer is permitted for safety reasons to: draw his/her gun; order the driver to turn off the vehicle and turn on an interior light; lean into the window to speak to the driver; shine a light into the stopped vehicle; and open the doors and order the driver and other occupants out of the vehicle. A frisk of an occupant should be assessed as discussed in the section regarding street encounters. To frisk an occupant of a vehicle, the officer has to have a reasonable suspicion that the occupant is armed with a weapon.

With respect to a stationary or parked vehicle, the officer has the right to conduct a request for information or a common law right of inquiry as he/she would of a civilian during a street encounter. However, an officer may not block the car or prevent it from leaving, otherwise the officer’s actions

are analogous to a Level 3 “stop” and must be justified by reasonable suspicion.

Upon finding that a police officer stopped a moving vehicle, the investigator will have to determine through research whether the officer had reason to believe that the driver and/or vehicle violated the Vehicle and Traffic Law or that one of the occupants of the vehicle or the vehicle itself was committing, had committed or was about to commit a crime based on observable conduct and/or hearsay information.

To research the issues raised by an allegation of a vehicle stop, the investigator should examine relevant provisions of the Vehicle and Traffic Law and case law on the Investigations Drive. With respect to cases involving a checkpoint, the investigator should examine Patrol Guide procedure 212-64 (use of vehicle checkpoints as a strategy for crime prevention).

Search of a Vehicle – (CCRB allegation: Vehicle Searched)

Because a citizen’s expectation of privacy regarding a vehicle is relatively low and a vehicle can easily take off and disappear, in the absence of a warrant an officer is permitted to search a readily mobile vehicle in a few different circumstances:

1. **Automobile Exception to Warrant Requirement:** An officer may search a vehicle and any containers found inside if the officer possesses probable cause to believe that it contains contraband, a weapon or evidence of a crime. This search can include a search of the trunk, the glove compartment, and any containers inside of the vehicle. Probable cause to search may exist in one of two situations. *First*, an officer may approach a vehicle without a basis to arrest the occupant, but observes evidence of criminality that supplies probable cause to search the vehicle. One important example of this exception is when officers lawfully stop a vehicle and smell the **odor of marijuana**, courts have held that the officer has probable cause to search the car and its occupants. Another important example is when officers are in a **lawful vantage point**, such as standing outside the car and using a flashlight to illuminate the interior, they may see contraband (guns, drugs, proceeds of a robbery) which supplies the probable cause to search the car.

Second, the circumstances that supply probable cause to arrest an occupant of a car may also give the police probable cause to believe the vehicle contains a weapon, contraband, or evidence of a crime. Thus, the probable cause to search is dependent upon the probable cause to arrest. In the second scenario, three requirements must be met to justify a search: (i) There must be an arrest; (ii) The police must possess probable cause to believe that the vehicle contains evidence or contraband; (iii) There must be a nexus, however flexible, between the arrest and probable cause.
2. **Limited Intrusion for Officer Safety:** Generally, absent probable cause, it is unlawful for a police officer to enter the interior of a stopped vehicle once the individuals have been removed and frisked without incident, since any immediate threat to the officers’ safety has consequently been eliminated. However, where “following a lawful stop, facts revealed during a proper inquiry or other information gathered during the course of the encounter lead to the conclusion that a weapon located within the vehicle presents an actual and specific danger to officer’s safety sufficient to justify further intrusion, notwithstanding the suspect’s inability to

gain immediate access to that weapon.” The exception requires that there is a **substantial likelihood** of a **weapon** in the car and a resulting danger to the officer’s safety that is “**actual and specific.**”

3. Consent Search: an officer may obtain consent from an individual to search his vehicle, but may only request consent if they possess founded suspicion of criminality. Consent must be voluntary. In addition, officers must confine their search to the scope of the consent given. For example, consent to search the vehicle does not mean that an officer may use tools to pry up floorboards of a vehicle or take it apart.
4. Inventory Search: a search of a vehicle may also be justified because it is an administrative search (e.g., an inventory search when a vehicle is vouchered) or when the police arrest the driver of an automobile for an offense. The inventory search guidelines that must be followed are described in Patrol Guide section 218-13.

As described above in the section regarding searches of a person, certain types of officers are required to have a civilian sign a **Consent to Search form**, and the officer’s failure to obtain this signed form can be noted as “Other Misconduct.”

The investigator will first have to determine whether or not a search of the vehicle occurred. Peering inside a car through windows and opening the doors while occupants are inside are not considered searches. Generally, when an officer breaks the plane of the doorway for a visual inspection (other than leaning into a window for safety reasons while speaking to an occupant), a search will have occurred.

Once the investigator determines that a search occurred, the investigator should consider the scope of the search and the ostensible rationale for the search. For example, should a search of the car be based allegedly upon consent, the investigator will have to determine whether the officer had the right to ask for consent (a founded suspicion that criminality was afoot), the scope of the alleged consent, and whether consent was given voluntarily. If the officers did not base their decision to search a vehicle on the occupant’s consent, or their need to take inventory of its contents, the investigator will have to determine whether there was probable cause to believe the car contained contraband, a weapon or evidence of a crime. If probable cause did not exist, the investigator will have to determine whether a limited search of the car was justified as a search incident to arrest, as a search for weapons during an investigative stop, or as a search for ownership or driver documentation.

To research the issues raised by an allegation of a vehicle search, the investigator should examine case law on the Investigations Drive, speak with their Squad Supervisor or Attorney, and consult Patrol Guide procedure 218-13 (inventory searches of automobiles and other property).

ALLEGATIONS STEMMING FROM ENTERING AND SEARCHING RESIDENCES OR COMMERCIAL PREMISES

Entering and searching a residence—CCRB allegation premises entered and/or searched

There are a limited number of circumstances under which police are permitted to enter someone’s

home. In *Payton v. New York*, 445 U.S. 573 (1980), the Supreme Court held that police officers who enter homes for search or seizure purposes must possess probable cause and a warrant, absent limited exceptional circumstances.

The analysis of whether a police entry into a residence or business was proper proceeds in several steps. First, the investigator must determine whether the officer entered a “premises” in which an individual possessed a reasonable expectation of privacy. Generally, any location where an individual resides is one where he or she possesses an expectation of privacy, including homes, apartments, rooms in single-residence occupancy (SRO) buildings or shelters, and hotels and motel rooms. In addition, an individual may, depending on the facts, possess an expectation of privacy in the curtilage of a home (a home exterior, backyard, porch, front yard); in hallways, stairways or other shared areas of an apartment building; and/or in driveways. With respect to commercial premises, officers generally have the same right as any civilian to enter commercial premises during normal business hours and make observations in the areas open to the public. However, certain areas within commercial premises may be private and closed to public access; officers must obtain a warrant to enter or search these areas. Finally, areas where an individual both lives and works may be protected premises. To find legal guidance on these issues, please consult the cases [REDACTED] or a Squad Supervisor or Attorney.

If an incident involves protected premises, the investigator must next determine whether an “entry” occurred. Entries involve any action where an officer breaks the plane of the doorway (or “threshold”) that separates the home from the exterior of the home. Even a matter of inches can comprise an entry as long as the officer breaks the plane of the doorway. Entries include situations where officers physically enter the home to search for an individual or evidence; where officers enter a home to arrest an individual seen through an open doorway; where officers put their foot in the doorway; and where officers pull an individual who is standing inside the threshold of the doorway outside of the home. However, where an individual opens the door to his home, and steps across or on the threshold, the officers’ arrest of the individual is not considered an entry into the home.

If an entry occurred, the investigator must determine whether the officers possessed and properly executed a warrant to enter the premises. In order to enter an individual’s residence in order to arrest that individual, officers must possess an arrest warrant. In order to enter a residence to search for and seize evidence, officers must possess a search warrant.

If the suspect is located in a third-party residence, officers need both an arrest warrant for the suspect and a search warrant for the third-party residence in order to enter that residence and look for the suspect.

Arrest or bench warrant

Arrest warrants consist of an order by a judge to arrest an individual. The judge’s order is based upon an officer’s affidavit, which sets forth facts that provide probable cause for the individual’s arrest. Bench warrants result when an individual, who was previously arrested, fails to appear in court as required; the judge (who sits on the “bench”) then issues a warrant for that individual’s arrest. CCRB complaints most frequently arise from warrant squads seeking to arrest individuals for whom a judge issued a bench warrant. Though such a warrant is described as a bench warrant, under the law a bench warrant is an arrest warrant, i.e., a warrant for an individual’s arrest.

Both arrest and bench warrants only permit officers to enter a dwelling to look for subject of the warrant if: (1) they reasonably believe it to be his residence; and (2) they reasonably believe he is present at the time they enter. Investigators must determine whether officers possessed a reasonable belief that the suspect lived within and was present in the residence. Investigators should examine the passage of time between the initial arrest, issuance of the warrant, and execution of the warrant, and whether the officers conducted appropriate inquiries to ascertain whether the suspect still resided at the address and was present there at the time of the warrant execution.

A warrant of arrest may be executed on any day of the week and at any hour of the day or night. Before entering the suspect's home, the officer must give notice of his/her authority and purpose to an occupant unless there is reason to believe that doing so would: result in flight of the suspect; endanger the life or safety of the officer or another person; or result in the damaging or destruction of evidence. If the officer is authorized to enter a dwelling without giving notice of his/her authority and purpose or if after providing such notice the officer is not admitted, the officer can break into the dwelling. Depending upon the characteristics of the fugitive or wanted individual, it may be appropriate for police to enter with guns drawn, to order the occupants on the ground, and to handcuff them in order to secure the premises.

Unless the officer encounters physical resistance, flight or other factors rendering normal procedure impractical, the officer must show the suspect the warrant if it is in the officer's possession. Although the officer need not possess the warrant, upon request the officer must show it to the suspect as soon as possible after the arrest.

Because an arrest or bench warrant permits police to enter a residence to search for and arrest a person, the police must confine their search within the residence to areas in which a person could be hiding, e.g., rooms and closets. With an arrest or bench warrant, the police will generally not be permitted to search through cabinets and drawers and must obtain a search warrant to conduct a search for evidence. If contraband is in plain view, however, police officers may seize it.

To research the issues raised by execution of an arrest or bench warrant to justify entry into a residence, the investigator should examine Patrol Guide procedure 208-01 (Law of Arrest), 208-42 (arrest on a warrant) and New York Criminal Procedure Law § 120.80 which relates to the execution of arrest warrants. Other Criminal Procedure Law sections relating to arrest warrants are: §§ 120.20, 120.30, 120.50, 120.55, 120.70 and 120.90.

Investigation Cards ("I-Cards")

Patrol Guide section 208-23 describes a computerized system that the NYPD has established to track individuals sought as suspects or witnesses to a crime. The "investigation card" system, in general terms, allows officers to enter details of an individual in the computerized system and create an "investigation card" for that individual. The officers can describe the individual as: (1) a "perpetrator," meaning that there is probable cause to arrest him; (2) a "suspect," which means there is no probable cause to arrest him; or (3) a "witness" sought for questioning.

It is important to note that Investigation Cards or I-cards are not warrants because they are not signed and issued by a neutral judge or magistrate. Therefore, I-cards grant no authority for police to enter premises to search for or arrest an individual.

Search warrant

A search warrant “particularly describing the place to be searched, and the persons or things to be seized” will authorize a police entry into residences and other premises to conduct a search for the evidence (persons or things) sought in the warrant.

A search warrant is a judicial order authorizing the police to conduct a search at a specified location for the evidence described in the warrant. Before signing a warrant, a judge reviews a sworn application (primarily written but occasionally oral) by a public servant, usually a police officer. If the judge concludes that probable cause exists to believe that the evidence sought can be found in or upon the place, premises, vehicle or person described in the warrant, the judge will sign the warrant.

A search warrant must be executed within ten days of its issuance. The hours during which a search warrant can be executed are ordinarily restricted to 6:00 a.m. to 9:00 p.m. Ordinarily, a police officer must make a reasonable effort to give notice of his/her authority and purpose to an occupant before entry and show the occupant a copy of the warrant upon request. Though officers can enter a premises knowing a warrant is en route, before beginning a search the officers are required to have with them a copy of the warrant. However, the application can set forth facts from which a judge may conclude that the evidence sought is easily damaged, destroyed or transportable and/or that providing notice will endanger the safety of the officers. Consequently, the judge will sign a warrant authorizing officers to execute the warrant without giving notice of their authority and purpose (frequently called a “no-knock” warrant) and at any time of the day or night.

If the officer gives notice of his/her authority and purpose, e.g., (“Police, open up, we have a search warrant”), waits a reasonable period of time, and is then refused entry, the officer can forcibly enter the premises, i.e., break into the premises. The officer is not required to give notice of his/her authority and purpose and may break into the premises if he/she: 1) has a no-knock warrant or 2) reasonably believes the premises are unoccupied. Whether or not the officer is required to give notice of his/her authority and purpose, the officer is authorized to use physical force to gain entry and to effect the search, for example, if an occupant interferes with or refuses to permit the search. In executing search warrants, police are generally trained to enter with guns drawn, to order the occupants on the ground, and to handcuff them in order to secure the premises. Under certain circumstances, the police can detain and frisk individuals before they begin to execute the warrant even if the individual is not named in the warrant, depending on the relationship of the individuals to the premises and the purpose of the search.

When the investigator determines that officers executed a search warrant, the investigator’s inquiry should focus on the propriety of the warrant’s execution (e.g., whether it was executed at the correct location in accordance with the warrant and whether it complied with New York statutory requirements), rather than on whether the warrant was based upon probable cause, a determination previously made by a judge.

To research the issues raised by the execution of a search warrant that would justify entry into a residence or other type of premises, the investigator should examine Patrol Guide procedure 212-75 (search warrant applications), 212-105 (search warrant execution & plain view doctrine), and Criminal Procedure Law §§ 690.30 and 690.50, which relate to the execution of the warrants. Other Criminal Procedure Law sections relating to search warrants are: §§ 690.05, 690.10, 690.15, 690.20, 690.35,

690.36, 690.40, 690.45, and 690.55.

If the investigator determines that officers entered protected premises without a warrant, the investigator must determine whether officers were justified in conducting a warrantless entry into the premises. There are certain, limited circumstances in which warrantless entry may be justified including consent, exigent or emergency circumstances, and hot pursuit. In addition, depending on the circumstances, officers may be justified in seizing evidence under the plain view doctrine.

Consent

Consent to enter or search, provided voluntarily by the suspect or by a third-party who shares authority or access over premises, permits the officer to enter or search the apartment within the scope of the terms of the consent. Whether consent was provided voluntarily is a question of fact to be determined from the totality of the circumstances. Relevant factors in assessing whether an individual voluntarily provided consent include: the age, intelligence, and background of the individual who provided consent; whether the police utilized coercion or threats (such as damage to property or threat of arrest); whether the individual was in custody or under arrest; and the degree of duress present as measured by the number of officers involved, time of day, and whether weapons and/or shields were displayed. Police officers may advise the individual that he/she can refuse to provide consent but are not required to do so. As described above in the section regarding searches of a person, officers may be required to have a civilian sign a **Consent to Search form**, and the officer's failure to obtain this signed form can be noted as "Other Misconduct."

Consent is not voluntary if it is provided by an individual based upon an officer's incorrect representation that they possess a valid warrant authorizing their entry into the premises.

A third-party, such as an individual who is legitimately in control of the area to be searched, or who has joint access and control over that area, may consent to a search. For example, a spouse or live-in companion can consent to a search of an apartment. But generally a landlord cannot consent to the search of a tenant's apartment nor can hotel management consent to the search of a guest's room. However, when a third-party has apparent authority to provide consent (but actually does not), the officer may be entitled to rely on the individual's apparent authority.

Consent can be provided in writing, explicitly during a conversation, or implicitly by actions or silence. However, the officer must have a founded suspicion that criminal activity is afoot to *request* consent.

Consent may be withdrawn after officers enter premises, at which point the officers should leave the premises without taking additional action.

It is important to confirm that officers confined themselves to the scope of the consent provided; in other words, an individual's consent to enter or "check the apartment" does not necessarily indicate consent to search all areas of the apartment.

Exigent circumstances and emergency circumstances

Exigent or emergency circumstances will permit the police to enter a residence without consent and without a warrant to make an arrest; such circumstances will also permit the police to enter and/or

search a residence if probable cause exists to believe that certain evidence can be found inside the premises. In many cases, the exigent or emergency circumstances will justify both a warrantless arrest and search; the rationale for permitting a warrantless entry and/or search is to permit the police to protect the public in a time-sensitive situation when there is insufficient time to obtain a warrant. While exigent circumstances and emergency circumstances are distinct exceptions to the general rule that a warrant is required to enter or search a residence, their similarity allows for the two concepts to be discussed in one section.

Please note that police officers are able to obtain emergency search warrants at almost any time of day. Therefore, when examining whether exigent or emergency circumstances exist, the investigator should focus on whether it was possible for the police officer to obtain a warrant under the circumstances.

Common situations that will require an analysis of the exigent or emergency circumstances doctrine include incidents arising from a radio call of shots fired; officers received a complaint or tip about individual with a gun in an apartment; officers received a complaint or tip about drugs in an apartment; and narcotics buy-and-bust operations. For a detailed discussion of exigent circumstances, see *People v. McBride*, and for a detailed discussion of the emergency doctrine, see *People v. Dallas*. Additional case law relevant to certain factual scenarios may be found on the Investigations Drive.

1. Exigent Circumstances Supporting Entries for Arrests

“[W]here certain urgent events occur which do not provide the police with sufficient time to obtain an arrest warrant, a warrantless entry into a suspect’s home [in order to make an arrest] is permissible” as long as the officer possesses **probable cause**. Among the factors to be considered in assessing whether a warrantless arrest at a suspect’s home is justified because of exigent circumstances are: 1) the gravity or violent nature of the offense; 2) whether there is reason to believe the suspect is armed; 3) whether there is a reliable basis for believing the suspect is in the premises at issue; 4) whether there is probable cause to believe that the suspect committed the crime; 5) the likelihood that the suspect will escape if not quickly apprehended; and 6) the time of day of the entry and whether the entry was peaceful in nature. That one or more of these factors is not present will not necessarily make the warrantless arrest unlawful. Under the exigent circumstances theory, for example, a court ruled that officers were entitled to enter an apartment through an ajar door without consent because a woman reported to them that she had just been raped at knifepoint in that apartment by a man the officers believed to be still in the apartment.

The factors that justify a warrantless entry to make an arrest at a suspect’s home will permit a warrantless entry to arrest a suspect at a third-party’s home.

2. Exigent Circumstances Supporting Entries to Conduct Searches

Warrantless entries and searches will also be permitted to avoid the loss or destruction of evidence when there is no time to obtain a warrant, for example, when it is necessary to prevent the imminent use or movement of dangerous weapons. Under these circumstances, the goal of the search is to find evidence. Among the factors to be considered in assessing a warrantless entry and search of a residence to prevent the imminent use or movement of evidence are: 1) the nature and degree of the urgency and the amount of time needed to obtain a warrant; 2) a reasonable belief that contraband is about to be removed; 3) the potential danger to officers who would have to guard the site of the contraband while a search warrant is sought; 4) information indicating that the possessors of the contraband are aware the police are on their trail; and 5) the ease with which the contraband can be

destroyed. That the police have probable cause to believe drugs can be found in a residence, e.g., as a result of a buy and bust in an apartment, will not justify (without other factors being present) an entry to make an arrest and search in the absence of a warrant.

3. Emergency Circumstances

Consistent with the need to protect public safety, police are also justified in entering (and searching) a residence when: 1) there are reasonable grounds to believe that there is an emergency at hand and an immediate need for police assistance to protect life or property; 2) the search is not primarily motivated by an intent to arrest and seize evidence; and 3) there is some reasonable basis to associate the emergency with the area or property to be searched. Thus, generally police are allowed to enter residences to locate or aid possible victims of a reported crime when there has been a report of a fight involving a gun, when they respond to a call involving a domestic dispute, when there has been a report regarding an emotionally disturbed person, when there has been a report of shots fired, and to investigate strange odors or other hazardous conditions. Any search that results from such an entry should be related to the emergency itself, e.g., a search for the source of the strange odor. Upon entering premises based upon an emergency, however, the police may conduct a protective sweep and search for occupants.

Hot pursuit

When the police are in hot pursuit of a suspect they are attempting to arrest, the courts have held that the fleeing suspect cannot thwart an otherwise lawful arrest by hiding out in his/her home or in the home of another person. Where an officer initiates an arrest outside of the home in public, the officer may continue the pursuit and forcibly enter a residence into which the suspect has sought refuge in order to make the arrest. However, the hot pursuit doctrine cannot justify an officer's warrantless entry into a resident to arrest an individual for a violation or misdemeanor.

Protective security sweep

Pursuant to an arrest or investigation inside a residence, a quick and limited walk-through of that residence will be justified when it is reasonable to conclude that third persons may be present who could pose a threat to police officers or who may destroy evidence. Officers must limit their sweep to those actions necessary to protect the officer from danger, i.e., the officer may look only in areas large enough to hide a person.

Plain View Doctrine

In certain circumstances, police may make a warrantless seizure of contraband or evidence of crime that is in plain view. The following three conditions must be met in order for the plain view doctrine to be applicable. *First*, the officer can only seize items in plain view if officer has a right to be in the position from which he makes the observation and has lawful access to the premises. For example, the officer may be lawfully present inside premises due to a valid warrant, consent, or exigent circumstances, and then may seize evidence or contraband in plain view. However, if an officer is outside premises, and sees evidence or contraband inside through a door or window, the officer cannot enter the premises without a warrant, consent or exigent or emergency circumstances.

Second, the discovery of evidence must be inadvertent. *Third*, the criminal nature of the object (i.e., that

it is evidence of crime, contraband, or otherwise subject to seizure) must be immediately apparent to the officer.

Failure to Show Search Warrant – CCRB allegation of failure to show search warrant

Investigators may receive complaints from civilians that officers failed or refused to show them a search warrant when entering and searching their premises. As an initial step, the investigator should determine whether officers properly executed a valid search warrant. If the officers did not possess a valid search warrant or improperly executed it, the propriety of the entry and search should be analyzed under the pleading “premises entered and/or searched” and there is no need to plead a separate allegation for the officer’s failure or refusal to show a search warrant.

If officers did possess a valid search warrant and executed it properly, then the investigator should plead the allegation “failure or refusal to show a search warrant.” Patrol Guide section 212-105 requires officers “executing the search warrant shall, when able to do so safely, show a copy of the search warrant to any of the occupants of the premises.” Investigators should conduct the necessary factual investigation to determine whether the officers showed a copy of the search warrant to the occupants of the premises, or were unable to do so because of safety concerns.

Entering and searching commercial premises—CCRB allegation premises entered and/or searched

A police officer has the same right as any other citizen to enter commercial premises and make observations. The same legal justifications for entering and/or searching residences discussed in detail in the previous section will also permit police to enter and/or search commercial premises when the premises are closed to the public or where certain areas are closed to the public. Additionally, when the state closely regulates specific types of businesses, the police or other law enforcement personnel will be entitled to conduct warrantless searches of these businesses. The rationale for these warrantless searches is that the monitoring protects the public and that these businesses have a diminished expectation of privacy. Businesses that are considered to be closely regulated include: tow truck businesses, retail cigarette businesses, and those businesses engaged in the sale of alcohol.

Reimbursement for property damage stemming from police entries and searches

Many civilians who make complaints about the police entering and/or searching their homes or businesses want to be compensated for any property damage the police caused. Patrol Guide procedure 214-20 (repair of entrances damaged during forced warrant entry into wrong premises or during an entry made during exigent or other unusual circumstances) requires police to repair at an owner/tenant’s request, property damaged when the wrong premise is entered. However, this repair does not always occur.

When a complainant/victim expresses a desire to obtain reimbursement for damages resulting from a police entry or search of his/her home or business, the investigator should inform the civilian that he/she can make a claim with the New York City Comptroller’s Office, Property Damage office: (212)-669-8750 or www.comptroller.nyc.gov (where he/she can obtain a claim form).

While the CCRB does not involve itself in obtaining reimbursement for the civilian, the investigator

should make it clear to the civilian that the CCRB can and will investigate the propriety of the police action that led to the property damage. The civilian's interest in reimbursement does not preclude an independent CCRB investigation. However, if the civilian is solely interested in reimbursement, the investigator should provide the comptroller's contact information to the civilian and refer the complaint to the Office of the Chief of Department.

Step Three: Obtain Evidence during Investigations Necessary to Resolve Search and Seizure Issues(s)

Once the investigator has identified the allegation and researched the issues raised by the allegation, the investigator should be prepared to question both civilian and police witnesses in order to obtain from them the facts to resolve the search and seizure issues. In addition, investigators should obtain other relevant evidence, including NYPD documents, 911 calls, radio runs, and any audio and video recordings.

In interviewing civilians or police officers, the investigator should always be aware of the ultimate issue he/she will have to resolve if the alleged search or seizure occurred: whether or not the search or seizure was justified. This section is designed to provide guidance on what specific information should be obtained from civilians and police officers in some of the most common scenarios that confront investigators investigating search and seizure issues. In planning his/her interview with civilians and police officers, the investigator should also consult the chapter on interviewing.

CIVILIAN WHO HAS BEEN QUESTIONED, STOPPED, AND/OR FRISKED

Interviewing civilians in cases in which search and seizure issues are raised can be difficult because the investigator generally conducts these interviews prior to obtaining any verbal or documentary explanation from the officers about the reasons for the encounter. The investigator is therefore in a position of having to anticipate the various reasons for the question, stop, and/or frisk. In considering the reasons for any question, stop, and/or frisk, the investigator should realize that the stop could be based on: 1) police observation of the civilian's conduct; 2) information provided by an informant (the reliability of which depends on his/her anonymity or willingness to identify his/herself); and/or 3) a combination of the two. Thus, it becomes important to question the civilian about his/her conduct prior to the encounter as well as his/her clothing and physical characteristics that could have formed the basis of a description provided to the officer(s) who questioned, stopped, and/or frisked the civilian.

Conduct prior to the street encounter

The investigator should determine from where the witness came, the route the witness took, where the witness was headed when the witness was stopped, and what the witness was doing. The investigator should ask the witness whether, prior to being stopped, the witness spoke to another person, shook hands with another person, stepped into a building or store, exchanged money or any other items with another person. The witness should be asked what, if anything, he/she was carrying (e.g., a knapsack,

a plastic bag) and what the witness had in his/her pockets or on his/her belt (e.g., a cell phone, a pager, a knife, a wad of money). The investigator should ascertain whether the witness was standing, walking, jogging or running; whether the witness had at any point either of his/her hands in specific pockets; and whether the witness made any movements towards adjusting his/her pants or waistband.

Clothing and physical characteristics

If the witness was with other individuals who were stopped, the investigator should find out the physical characteristics of each of these individuals and determine what each individual was wearing at the time of the police encounter. For each individual stopped, the investigator should attempt to determine the individual's sex, race, height, build, and other physical characteristics along with a complete description of what the individual was wearing, including the color of hats, pants, shirts or jackets, etc. In cases in which an officer asserts that an individual had a bulge and/or made a furtive gesture, it becomes important to know how the individual wore his/her clothes. For example, if the individual was wearing a jacket, the investigator should determine how thick and long the jacket was and whether the jacket was closed or open. If the individual was wearing only a shirt or sweater the investigator should determine whether it was tucked into the individual's pants or hanging loose. The investigator should also determine whether the individual was wearing tight fitting or loose pants.

CIVILIAN WHOSE VEHICLE POLICE STOPPED

With respect to a vehicle stop and the police action that ensues following that stop (e.g., frisk of the vehicle's occupants and/or search of the vehicle), the investigator should again be cognizant of the possible reasons for the vehicle stop: 1) police observation of an occupant's conduct prior to getting into the vehicle; 2) police observation of a vehicle and traffic violation; 3) police observation of an occupant's conduct inside the vehicle; 4) information provided by an informant (the reliability of which depends on his/her anonymity or willingness to identify his/herself); and/or 5) a combination of 1, 2, 3 and/or 4. It is therefore important to question the occupant(s) about his/her conduct prior to entering and inside the vehicle, the vehicle's movements, and the physical condition and characteristics of the vehicle.

Conduct prior to entering and once inside the vehicle

If the occupant was not inside the car for a significant period of time prior to the car stop, the investigator should question the occupant about his/her conduct (and any other occupants' conduct) prior to entering the vehicle. As discussed in the previous section, the investigator should ask the occupant where the occupant came from prior to entering the vehicle, the route the occupant took, and what the occupant was doing. The occupant should also be asked about whether he/she spoke to another person, shook hands with another person, stepped into a building or store, or exchanged money or any other items with another person. The investigator should determine whether the vehicle had been in an accident or whether the civilians were engaged in any illegal activity prior to the vehicle stop.

The investigator should clearly determine the positions of all the occupants inside of the car and find out if the occupants used safety belts or child safety seats. The investigator should question the occupant about any unusual movements by him/her or other occupants while they were inside of the

car. For example, the investigator should determine whether the occupants leaned down to look under or retrieve something under the seat, switched positions inside of the car, turned their heads to look at a police vehicle or at anything else, went inside the glove compartment, or put their hands inside their pockets. Whether the occupants made any of these types of movements just prior to or after being stopped is particularly important in assessing police decisions to frisk occupants and/or search the vehicle.

Conduct after vehicle stopped

The investigator should also ask the civilian and witnesses regarding their behavior after their vehicle was stopped by the police. Specifically, the investigator should determine any actions taken by the occupants, including bending, reaching, or any other movements, whether innocuous or not. The investigator should determine whether the occupants were removed from the vehicle, and if so, whether they left the vehicle voluntarily or by force. Further, the investigator should determine where the occupants were taken once outside of the car, and whether they were frisked or searched. The investigator should ask questions about the officers' actions once the civilians were outside of the vehicle, including whether the officers asked consent to enter the vehicle, and if the officers searched or entered the vehicle, the locations they did so.

The investigators should ask whether any items were taken from the vehicle, and whether the vehicle was taken by the police and vouchered. The investigator should also determine whether the civilian was given a traffic ticket, and if so, the investigator should obtain a copy from the civilian or the NYPD. The investigator should determine whether the civilian was arrested, and whether the arrest was related to the reason why the civilian's vehicle was stopped.

The vehicle's actions

The investigator should ascertain from the occupant the route the vehicle took, whether the vehicle illegally parked at any point, prior to the stop how fast the vehicle was moving, whether the vehicle turned and if so whether the driver signaled.

Physical characteristics and condition of the vehicle

Information pertaining to the vehicle will be important if the police acted in response to information provided by an informant (e.g., three men in a green four-door BMW robbed a deli) or stopped the car because the car itself violated the Vehicle and Traffic Law. The investigator must obtain the make, model, color, type (e.g., sedan, van, sports utility vehicle), number of doors and license plate number of the vehicle. The investigator should ask the occupants whether the vehicle had tinted windows, whether the license plates were properly attached to the car, and whether the lights and turn signals of the car were properly functioning.

OFFICER WHO QUESTIONED, STOPPED, AND/OR FRISKED A CIVILIAN OR STOPPED A VEHICLE BASED UPON HIS/HER OWN OBSERVATIONS

When an officer asserts that he/she stopped and frisked an individual because, for example, the officer observed an individual make a suspicious gesture towards a pocket bulge, or stopped a vehicle because it failed to signal, the investigator must carefully question the officer about: 1) his/her ability

to make these observations; 2) the details concerning the officer's observations; and 3) the reason(s) for taking the specific action(s).

The investigator should question the officer about the circumstances that led the officer to approach the civilian or vehicle, and any additional information that the officer obtained over the course of the encounter. The investigator should determine exactly what words and questions were exchanged between the officers and civilians, and the civilian's behavior in response to the officer's questions or words. The officer should determine the exact location of all relevant incidents.

The investigator must find out where the officer was when he/she made such observations, where the civilian was, at what distance these observations were made, what the sources of lighting were, and what, if anything, obstructed the officer's view. If the officer was inside a vehicle, the investigator should determine where the officer was positioned inside the vehicle, where the police vehicle was, and how fast the police vehicle was traveling. The officer should also be questioned about the details regarding the observation such as what hand the civilian moved, where the bulge was located, the size and definition of the bulge, the clothing the civilian wore, and how the clothing was worn. In addition, the investigator should ask the officer about the nature, speed and sharpness of any motions made toward the bulge, and the officer's thoughts during the incident about what the bulge was.

If it is not obvious based upon the officer's statement, the investigator should ask the officer why he/she took a particular action, e.g., frisked an individual, and question the officer's explanation if appropriate. For example, should the officer assert that he/she frisked an individual out of a concern for his/her safety, the investigator should ask the officer to specify why he/she was concerned for his/her safety, and what factors led the officer to this conclusion. In appropriate cases, the investigator should also ask the officer about the civilian's race and the race of individuals who live in and frequent the neighborhood.

For vehicle stop and searches, officers should be questioned about how long they observed the vehicle before stopping it; what they observed prior to the stop and immediately after the stop; what they observed upon approaching the vehicle; the number of people inside the vehicle; whether any of the occupants were removed from the vehicle; whether the officer entered the vehicle with any part of his body, and if so, the purpose and scope of the entry; whether any items were recovered from the vehicle; whether a ticket or summons was issued, or an arrest was made; whether the car was vouchered; and whether an inventory search was made, with an inventory list.

OFFICER WHO QUESTIONED, STOPPED AND/OR FRISKED A CIVILIAN OR STOPPED A VEHICLE BASED UPON INFORMATION PROVIDED BY AN INFORMANT

When an officer takes action based upon information provided to him/her, it is important for the investigator to learn: 1) the circumstances under which the officer received the information; 2) the source of the information; and 3) what specifically was conveyed to the officer.

When and where the officer received the information

Determining when and where the officer received the information can be relevant in determining whether the officer's subsequent actions were justified. Legally, it can be significant if an officer saw

an individual matching a description ten minutes after a reported crime took place rather than three hours. Thus, the investigator should find out the time the officer received information, the time that the reported activity or crime allegedly took place, where the officer was when he/she received the information, and what the officer did once the information was received.

Identification and reliability of the informant

The reliability of the information provided to police is also relevant in assessing the legality of the action taken by the officer. The investigator must therefore ascertain the source of the information conveyed to the officer who relied upon it in stopping a pedestrian or vehicle. Thus, an officer who reports that he/she received a "radio run" should be questioned about the source for the information conveyed in the "radio run." If an officer acted based upon information provided by another officer, the investigator should determine the identity of the other officer. When an officer is directed by another officer to make an arrest or stop, the receiving officer is entitled to assume the sending officer has probable cause or reasonable suspicion. In essence, the receiving officer is entitled to presume that the sender officer's information is reliable. The investigator should find out whether a member of the public made a complaint or report to the department and if so, who. Civilian informants can provide information to the department anonymously over the telephone, in a face-to-face conversation without identifying themselves (or without being asked to identify themselves), or can identify themselves by name and address. An anonymous informant is considered to be less reliable than an unidentified informant who speaks to the officer face-to-face; most reliable is an identified citizen informant. A registered confidential informant's reliability is measured by his/her past reliability and source of information.

When an officer acts based upon information provided by an informant, the investigator should also ask the officer if he/she knows the basis for the informant's knowledge, i.e. how the informant knew the suspect had a gun.

The information conveyed

Where there is documentation regarding the source (and substance) of the information, the investigator must attempt to obtain it. In many cases the information conveyed to the officer is documented in a tape-recording of radio transmissions, a complaint report (UF 61) of a crime, a crime pattern roll-call report, or a wanted poster. In the absence of such documentation, the investigator should attempt to interview the source of the information that was conveyed to the officer, if that source is known.

It is absolutely crucial for the investigator to obtain in as much detail as possible the exact information conveyed to the officer who received it. As discussed above, when the officer's basis for action is a radio transmission from a fellow officer or radio dispatcher, the investigator must obtain the original 911 call, transmission from a fellow officer, and/or transmission from the dispatcher to the officer. When the officer's basis for action is an unrecorded conversation with a fellow officer or civilian, the investigator should first ask the officer for a description of what was conveyed and then follow-up with specific questions to determine: the substance of the suspicious activity or crime; the time and location of the suspicious activity or crime; the number of suspects, the physical characteristics of the suspect(s), the clothing worn by the suspect(s), and the location of the suspect(s). If the suspect used a vehicle, the investigator should ask the officer if he/she received information regarding the make, model, color, type (e.g., sedan, van, sport utility vehicle), the number of doors, and/or license plate of

the vehicle.

QUESTIONING OFFICERS WHO PARTICIPATED IN NARCOTICS BUY AND BUST OPERATIONS

Buy and bust operations that result in the stop, frisk, and/or search of an individual from whom the police do not recover contraband are common sources of CCRB complaints yet often confound investigators assigned to investigate them. It is therefore important to understand how these operations generally work, the officers the investigator should interview, and what the investigator should focus on in the interviews in trying to ascertain whether the stop, question, and/or frisk was justified.

How buy and bust operations work

In buy and bust operations, narcotics officers work as a team. Prior to going out in the field, the team meets to discuss the day's assignments and planned target locations. An officer is usually designated as the arresting officer for the day's arrests; that officer is usually responsible for recording buy money that the undercover(s) will use to make buys during the day. The undercover officer's goal is to purchase drugs using prerecorded buy money. The undercover, who may wear a one-way transmitting device known as a "Kel," is trailed by (a) ghosting officer(s), whose job it is to make sure the undercover is safe. The ghost(s) can also carry a "Kel" and/or the ghost(s) can carry a two-way radio. Often in the ghosts' vehicle there is a two-way radio that can be used if strategically feasible. The assigned team leader (usually a sergeant or lieutenant) will have the receiver for the one-way communications sent by the undercover or the ghost. The team leader will also possess a two-way radio that is connected with the rest of the team. If the undercover buys drugs, the undercover may make a pre-planned physical movement (positive buy sign) to indicate to the ghost(s) that the undercover successfully bought drugs. The ghost(s) and/or the undercover will radio (a) description(s) of the seller(s), who are known as John Does, e.g., JD black hat. The back-up team, using unmarked vehicles, then converges on the seller(s)' location and attempts to apprehend the seller(s). (One vehicle is usually designated for holding and transporting prisoners arrested by the team.) Theoretically, the back-up team hopes to find the seller(s) in possession of the prerecorded buy money, additional money (proceeds from other sales), and a stash of narcotics which match those purchased by the undercover. The apprehension of the suspect(s) generally takes place out-of-sight of the undercover police officer; the ghosting officer(s) may shadow the undercover officer and return to the vehicle or may shadow the suspect(s) until the back-up team moves in. Following the apprehension, the undercover officer and/or ghosting officer(s) usually drives by the location where the suspect is being held and informs the back-up officers by radio whether the back-up team stopped the correct individual.

Sometimes, the undercover officer or ghosting officer observes narcotics transactions in which the undercover did not participate, e.g., while the undercover is waiting to buy narcotics. In these situations, the undercover and/or ghosting officer may inform the back-up team by radio of such an observation, which will prompt the back-up team to stop the suspect(s).

Should a back-up team of officers question, stop, frisk, and/or search an individual, upon interviewing officers who were members of the team the investigator should focus preliminarily on

understanding what type of operation the officers were conducting-the purpose of the operation and how the operation worked. The investigator should ascertain the names of the officers assigned to the operation, the role of the officers assigned to the operation, with whom the officers worked, in what vehicle they worked, their positions inside each vehicle, how the officers communicated with each other, whether the transmissions were recorded, and whether the operation was video-taped or audio recorded by the officers.

The investigator should generally interview the back-up officer(s), the source of the transmission that prompted the action taken by the back-up officer(s), and any police witnesses who made observations of the conduct that prompted the transmission. The officers who made the transmission or who made observations of transactions will usually be the undercover officer and/or the ghosting officer(s).

In interviewing the back-up officer(s), the undercover officer, and the ghosting officer(s), the investigator's goal is to obtain information from which he/she can determine whether the subject officer(s) was legally justified in questioning, stopping, frisking and/or searching the civilian(s). The investigator should establish what observations the undercover officer made, with whom the undercover officer had contact, what the undercover and suspect(s) did, what was said, the physical and clothing descriptions of the suspect(s), the location of the suspect(s), where the undercover went after the transaction, what transmission, if any, the undercover put over the air and when he/she made that transmission. If the suspect(s) used a vehicle, the investigator should find out from the undercover the vehicle's description and the direction it took once the interaction concluded. With respect to the ghosting officer(s), the investigator should question his/her ability to make observations, the details concerning those observations, and the details concerning any transmission the ghosting officer heard or put over the air. In interviewing the back-up officer(s), the investigator should ascertain where the officer was and with whom, who had access to the radio transmission, what time the transmission was made, the substance of the transmission, and what the officer did after he/she learned of or heard the transmission.

Often times ghosting officers and undercover officers transmit descriptions of suspect(s) (and of his/her vehicle) without specifically describing what the suspect(s) did. When this occurs, the investigator will have to ask what the officer believed the transmitter meant in putting a description over-the-air and the basis for the officer's understanding. Under the fellow officer rule, a receiving officer can rely on the information provided by the sending officer, even when that information is provided through code words. The transmissions over the Kel or the two-way radios can be filled with many voices and it can be difficult to make out one voice in particular. It is important that investigators determine how long the receiving officer has worked with the officer who made the transmission, how many times they have heard that officer's voice over the radio and how they were able to recognize the voice. Officers may test the radio equipment at the tactical plan meeting and it is important to determine if the undercover spoke over the Kel or the radio at that time.

The investigator should question all officers regarding the conduct of any identification procedure. The investigator should determine who observed the suspect(s) in custody and how that occurred. The investigator should question the officers about what, if any, radio transmission was made following the drive-by identification procedure and what took place after that radio transmission. Sometimes there are no radio transmissions and the undercover solely makes the "buy sign." These signs vary from team to team and can vary over time. The investigator should determine what the buy sign was and if it changes on a regular basis.

Please see the appendix for this chapter for a sample list of questions for each major participant in a narcotics buy and bust operation.

QUESTIONING OFFICERS WHO PARTICIPATED IN OBSERVATION POST NARCOTICS OPERATIONS

Observation post narcotics operations that result in the stop, frisk, and/or search of individuals from whom the police do not recover contraband are another common source of CCRB complaints. As in buy and bust operations, these narcotics officers work as a team. An officer or officers is responsible for observing a location in which narcotics are sold from a hidden observation post, commonly referred to as an OP. Often using binoculars, these officers relay descriptions of individuals who are suspected of engaging in hand-to-hand drug transactions. The back-up officers, using unmarked vehicles, apprehend these suspects. In many operations, the OP officer transmits descriptions of buyers before describing the seller(s). The back-up team apprehends buyers and hopes to recover narcotics that will match those found at a later point in the possession of the seller(s). In many operations, the ultimate goal is to apprehend the seller(s) who theoretically should possess money (proceeds from sales) and a stash of the same narcotics found on those already apprehended. Like in buy and bust operations, the back-up team's apprehension of suspects often takes place out of the OP officer's sight and the officer(s) who made the observations will have to view the apprehended suspect(s) to determine if the back-up team nabbed the correct individual(s).

Just like investigating a question, stop, frisk and/or search that resulted from a buy and bust operation, in interviews the investigator should focus preliminarily on understanding what type of operation the officers were conducting—the purpose of the operation and how the operation worked. The investigator should ascertain the names of the officers assigned to the operation, the role of the officers assigned to the operation, with whom the officers worked, in what vehicle they worked, their positions inside each vehicle, how the officers communicated with each other, whether the transmissions were recorded, and whether the operation was video-taped.

The investigator should generally interview the back-up officer(s), the source of the transmission that prompted the action taken by the back-up officer(s), and any police witnesses who made observations of the conduct that prompted the transmission.

In interviewing the back-up officer(s) and the officer(s) in the observation post, the investigator's goal is to obtain information from which he/she can determine whether the subject officer(s) was legally justified in questioning, stopping, frisking and/or searching the civilian(s). As described in the section on buy and bust operations, the investigator should focus on the observations of the OP officer, that officer's ability to make those observations, and what that officer transmitted to his/her back-up team. As in buy and bust operations, the OP officer may transmit descriptions of suspect(s) without specifically describing what the suspect(s) did. When this occurs, the investigator will have to ask what the officer believed the transmitter meant in putting a description over-the-air and the basis for the officer's understanding. Under the fellow officer rule, a receiving officer can rely on the information provided by the sending officer, even when that information is provided through code words.

Again, as in buy and bust operations, the investigator should question all officers regarding the

conduct of any identification procedure. The investigator should determine who observed the suspect(s) in custody and how that occurred.

Questioning the arresting officer or back-up officers in an observation post operation is similar to questioning the arresting officer or back-up officers for a buy and bust operation; the investigator should reference those sample questions which are set forth above.

Appendix _ contains a list of sample questions that an investigator can use to guide his or her interview of the observation post officers.

CIVILIAN WHO WAS ARRESTED OR GIVEN A SUMMONS

The arrest report or summons itself provides the starting point in interviewing a civilian to determine whether the officer had probable cause to arrest the civilian or issue the civilian a summons. That starting point is the officer's documented rationale for the arrest or summons: the statutory section(s) pursuant to which the arrest was made or the summons issued and the narrative in the arrest report or summons to support the police action. Since the investigator can obtain the arrest report using the booking, arraignment, disposition system ("BADs") database, prior to the interview the investigator should always review the arrest narrative and the statutory sections pursuant to which the officer made the arrest. With respect to a summons, the investigator should obtain any documentary evidence the civilian has prior to the substantive interview and review the statutory section pursuant to which the summons was issued before asking substantive questions, if necessary. If the civilian does not have the summons in his/her possession, the investigator should attempt to ascertain from the civilian the violation or crime for which he/she was summonsed and why.

In the interview with the arrestee and other witnesses, the investigator should question the civilian about his/her conduct prior to the encounter with the officer, as the investigator would in questioning a civilian who was questioned, stopped, and/or frisked. As discussed earlier, the CCRB opts to exercise its jurisdiction to investigate arrests and summonses primarily when there are facts from which it can be concluded that an arrest was made or a summons issued in retaliation for some act committed by the complainant/victim (e.g., the use of an obscenity, a challenge to the officer's authority, a request to obtain the officer's name or badge number, or a threat to file a complaint). As a result, ordinarily the civilian's conduct during his/her interaction with the officer(s) will be what is at issue rather than the civilian's conduct prior to the interaction. The investigator should therefore focus his/her questioning on the civilian's interaction with the officer; the investigator should use elements of the crime or offense for which the civilian was summonsed or arrested to frame his/her questions. In situations where the civilian is arrested or summoned for disorderly conduct, for example, the investigator should carefully question the civilian about: what he/she and the officer(s) said, where the parties were when different statements were made, in what tone and at what volume the parties made statements, whether other individuals were nearby, and what physical interaction the civilian had with the officer(s) or other individuals with whom the officer was interacting. The investigator should also find out what, if anything, resulted from the civilian's actions, e.g., a crowd formed or traffic slowed.

OFFICER WHO MADE AN ARREST OR ISSUED A SUMMONS

The investigator should approach the interview of the officer(s) using the same analytical framework for interviewing civilians. The issue presented by an arrest or issuance of a summons is whether the officer had probable cause to make the arrest or issue the summons. To make this determination, the arrest report or summons itself should provide the starting point. That starting point is the officer's documented rationale for the arrest or summons: the statutory section(s) pursuant to which the arrest was made or the summons issued and the narrative in the arrest report or summons to support the police action.

Depending on the underlying statutory section(s) relied upon by the officer, the investigator should focus on determining what it was that the civilian did that led the officer to make the arrest or issue the summons. Just like in the interview with a civilian, the investigator should carefully question the officer about the civilian's conduct during their interaction. In situations where the civilian is arrested or summoned for disorderly conduct, for example, the investigator should carefully question the officer about: what the civilian and the officer(s) said, where the parties were when different statements were made, in what tone and at what volume the parties made statements, whether other individuals were nearby, what physical interaction the civilian had with the officer(s) or other individuals with whom the officer was interacting, and what, if anything, resulted from the civilian's actions. It is also important that the investigator always ask the officer why he/she arrested the civilian or issued the civilian a summons and what the civilian did to make him guilty of committing, say, disorderly conduct, or obstructing governmental administration.

CIVILIAN WHOSE RESIDENCE OR BUSINESS WAS ENTERED AND/OR SEARCHED

In interviewing the civilian, the investigator should attempt to determine if the officer(s) gave an explanation for his/her presence and/or search. When the police enter premises pursuant to a search warrant, that fact is generally clear upon hearing the civilian's account. The more difficult cases involve the execution of bench or arrest warrants and entries and/or searches done for other reasons. When it is unclear why the police came to the location, the investigator will have to take a broad approach in his/her questioning.

Taking that broad approach, the investigator should learn the layout of the location and ascertain the length of time the civilian has lived at the location, the names of all individuals who live at the location, the names of the individuals who were present when the officer(s) arrived, and the names of frequent visitors. With respect to businesses, the investigator should find out the civilian's relationship to the business, the owners and employees of the business, and the goods and services the business provides. The investigator will need to know what the civilians inside the premises were doing and where they were when the officer(s) showed up. The investigator should determine whether there was any unusual noise or smells emanating from the premises, whether anyone inside the premises called the police, and whether the civilian is aware of someone else calling the police about the location.

The investigator should carefully question the witness about how the police gained access to the premises. For example, in a case in which the civilian claims that officers forced their way past the civilian, the investigator should find out whether the officers knocked or rang the bell, where the

civilian was when he/she heard the knock at the door, what the civilian did, how long it took for the civilian to go to the door and what the civilian and the officer(s) said at the door. The investigator should also find out whether the door was opened, how the door was opened, how far the door was opened, what was said when the door was opened, and what happened after the door was opened.

The investigator should ask the witness whether the officers showed the witness any documents or paperwork, and what these documents looked like. The investigator should ask the witness whether and what references the officers made to warrants, and what kind of warrants.

With respect to searches, the investigator should determine whether the civilian saw specifically where the officer went and what the officer did inside the premises and, if the civilian was in a position to make such observations, detail what these observations were. To the extent that the civilian did not see what the officer specifically did, the investigator should find out the conditions inside certain rooms before and after, for example, the civilian saw an officer enter and leave them.

OFFICER WHO ENTERED AND/OR SEARCHED RESIDENCE OR COMMERCIAL PREMISES

Broadly, the investigator will question the officer who entered and/or searched a premise about why the officer was at the premise, how entry was effected, the extent of any search, and the reasons for the officer's actions. The investigator should keep in mind that an officer generally enters and/or searches premises based upon: 1) information provided by an informant; 2) his/her own observations; 3) an arrest or bench warrant; 4) a search warrant; and 5) a combination of 1 and 2. The focus of the investigator's questioning will depend upon the facts provided by the civilian(s) and the officer(s) from which one or more lawful justifications for the entry and/or search might be drawn.

Entry and/or search based upon information provided by an informant and/or the officer(s) observations

Information provided by an informant (civilian or a fellow officer) and/or the officer's own observations may result in the officer going to the premises and obtaining consent to enter or may, on their own, constitute exigent or emergency circumstances, or justify entry as part of a hot pursuit.

As discussed above, when an officer bases his/her actions in whole or in part on his/her own observations, e.g., hearing a fight take place inside a premise, smelling a foul odor emanating from a premise, or chasing a suspect the officer claims possesses narcotics, the investigator must question the officer about: 1) his/her ability to make these observations; 2) the details concerning the officer's observations; and 3) the reason(s) for the officer's entry and/or search.

As also discussed above, when an officer bases his/her actions in whole or in part on information the officer received from someone else (a civilian or a fellow officer), it is important for the investigator to learn: 1) the circumstances under which the officer received the information; 2) the source of the information; 3) what specifically was conveyed to the officer; and 4) the reason(s) for the officer's entry and/or search.

Entry and scope of search-consent

In questioning the officer, the investigator will always want to determine how the officer entered the premises. Sometimes, it will be undisputed that the entry was a forcible one. In many other instances though, how the officer(s) entered a premise will be in dispute. Even if the civilian or officer does not specifically raise consent as an issue, the investigator should pose questions to determine whether or not the entry and/or search resulted from consent.

With this goal in mind, the investigator should determine whether the officer(s) knocked or rang a doorbell and what the officer(s) said upon doing so, as well as the response the occupant(s) gave. The officer should be asked how long it took the occupant to respond, whether the occupant opened the door and if so how far, what the parties said at the door, and what happened once the door was opened. The investigator should ask what room(s) the officer(s) entered, what the officer(s) did in each room, and the purpose for going into each room. To the extent that the officer(s) went into rooms and conducted a search, the investigator should probe the officer about any conversation that took place between the officer(s) and the occupant(s)—so that the investigator can determine whether the occupant(s) implicitly or explicitly gave consent. In addition, the investigator should determine whether the officer asked the occupant to provide written consent for the entry and/or search and whether the occupant refused or complied. The investigator should determine whether the officer obtained a signed consent to search form.

Arrest or bench warrant or investigation card

Oftentimes, armed with an arrest or bench warrant, the officer will visit an address (not the suspect's residence) and allegedly obtain consent to enter the residence. In such a case, consent will be one of the issues confronting the investigator. Questioning an officer about consent is discussed above.

With an arrest or bench warrant, however, the police do not need consent to arrest an individual inside that individual's home. The investigator should obtain a copy of the warrant itself and determine when a judge signed or issued the warrant. With respect to bench warrants, which generate a considerable number of CCRB complaints, the investigator should find out when the officer was assigned to the warrant and what steps the officer took over time to find the suspect. Generally, the officer uses the address the suspect gave to police when he/she was arrested for the case in which the suspect failed to return to court. When it is alleged that there was an improper entry, the investigator should find out whether the officer took any other steps to determine whether this address was the suspect's present residence, e.g., whether the officer examined mail-boxes, spoke to neighbors or the landlord, or examined more recent arrest records regarding the suspect.

Investigators should determine whether the officers possessed an "investigation card" when they arrived at the incident location. Investigators should determine the identity of the subject of the investigation card, when the investigation card was generated, whether the subject of the I-card was wanted as a perpetrator, suspect or witness, and what other investigative steps were taken to find the subject of the I-card.

Search warrant

The most important piece of information relating to an entry and search based upon a search warrant

is the warrant itself. Based upon the information provided in the warrant, the investigator's questioning of the officer should focus on whether the officer(s) entered and searched the location(s) specified in the warrant and whether the execution of the warrant conformed to the authorization contained in the warrant. For example, if the officer describes booming down the door without first knocking and giving the occupant(s) an opportunity to respond, the investigator will have to examine the warrant to see if it was a "no-knock" warrant. In comparing the execution with the action authorized in the search warrant, the investigator will have to determine what location the police entered and searched, how the police entered the location, the time at which the police entered the location, the whereabouts of the warrant when the police entered the location, and the scope of the search conducted.

Further, investigators should confirm that the search warrant was executed within 10 days of its issuance by the judge.

Step Four: Attempt to Determine Whether the Alleged Search and/or Seizure Occurred and Whether it was Lawful

Within the closing report for every full investigation, the investigator must attempt to determine what happened. In a case in which it is alleged that Officer X frisked civilian A, attempting to determine what occurred will result in one of three outcomes: 1) Officer X frisked civilian A; 2) Officer X did not frisk civilian A; or 3) there is insufficient evidence to determine whether or not Officer X frisked civilian A. To reach either the first or second conclusion requires a preponderance of the evidence. For a discussion on how to assess credibility and what preponderance of the evidence means, the investigator should refer to the conclusions and recommendations section in the chapter on closing reports.

In analyzing search and seizure allegations, if there is insufficient evidence to determine whether or not the alleged search or seizure occurred, e.g., whether Officer X frisked civilian A, the recommendation will be "unsubstantiated" and the analysis ends. If the evidence proves that the alleged search or seizure did not occur, e.g., Officer X did not in fact frisk civilian A, the recommendation will be "unfounded" and the analysis also ends. If the evidence proves that the alleged search or seizure occurred, e.g., Officer X did frisk civilian A, the analysis does not end. The investigator must next determine whether the conduct was lawful.

Because of the confusing nature of much of search and seizure law, it is sometimes difficult to decipher through research whether the search and/or seizure that occurred was lawful. Determining whether the search and/or seizure was lawful involves the same processes by which the investigator researches search and seizure issues, as described earlier in step 2. For an overview of the research resources available to the investigator generally, and for an allegation-by-allegation delineation of relevant Patrol Guide procedures, Penal Law and Criminal Procedure Law statutory sections, and other resources, the investigator should review the section on step 3 in this chapter. Once the investigator conducts the required research, the investigator will compare the facts of the search or seizure at issue to the guidelines courts have established for such a search and seizure. The investigator, for example, will have to determine whether Officer X had reasonable suspicion to

believe civilian A was armed with a weapon or reasonable suspicion or to believe civilian A was committing, had committed or about to commit a violent crime and/or one that is linked to the possession of weapons. If the search and/or seizure was lawful, e.g., Officer X lawfully frisked civilian A, the recommendation will be "exonerated" and the analysis ends. If it cannot be determined whether the search and/or seizure was lawful, e.g., it is unclear whether the frisk of civilian A was lawful or unlawful, the recommendation will be "exonerated" and the analysis ends. Finally, if it is determined that the search and/or seizure was unlawful, the recommendation will be "substantiated."

**See below for sample interview questions for narcotics buy and bust participants.*

CONFIDENTIAL

What follows are typical questions the investigator should ask of the major participants in a narcotics buy and bust operation.

The questions below are follow-up questions for an arresting officer (and back-up officer) who has described in his/her open-ended narrative working as an arresting or back-up officer in a buy and bust operation where the team took action based upon a transmission from an undercover and/or ghosting officer. This line of questioning presumes that the officer has already told the investigator what hours he/she worked on the day of the incident, explained that he/she was assigned to a buy and bust operation, and explained how this buy and bust operation worked. The investigator should not rely solely on these questions in interviewing buy and bust officers. These questions are focused on the operation, the source of the transmission(s), the substance of the transmission(s), and the officer's actions and observations after receiving the transmission(s)—information relevant to search and seizure issues.

[illegible]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Undercover officer

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Observation post officer

These questions consist of follow-up questions for an officer who has described in his/her open-ended narrative working as an OP officer in an operation where the team took action based upon a transmission from him/her. This line of questioning presumes that the officer has already told the investigator what hours he/she worked on the day of the incident, explained that he/she was assigned to a narcotics operation, and explained how this operation worked. This line of questioning presumes that the officer asserted that he saw John Doe buy drugs.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL

Chapter Six: Drafting Allegations— Pleading Language and Applicable Patrol Guide Procedure

Uniform Pleading Language and Patrol Guide Procedures and Legal Standards Applicable to FADO Allegations

IMPORTANCE OF UNIFORM PLEADING LANGUAGE

Within the CTS, there is a drop-down menu of the most commonly pleaded allegations for each FADO category. This chapter provides standard pleading language. **Consulting this chapter to ensure proper pleading is mandatory.** Use of the standardized language minimizes mistakes, speaks to the professional nature of the CCRB, and ensures that disposition letters will contain allegations that make sense to the reader.

What follows are allegation charts, or allegation menus, organized by FADO category. The use of the term “OFFICER” is a catch-all for the non-abbreviated rank and full name of the subject officer at the time of incident; the use of the term “VICTIM” is a catch-all for the first and last name of the alleged victim, if known, and for the terms “individual” or “individuals” if the alleged victims are unidentified.

Importance of Applicable Patrol Guide Procedures

For commonly pleaded allegations, the investigator will also find in this chapter the Patrol Guide procedure(s) and other legal standards applicable to the allegations. The investigator should consult other chapters that deal in depth with how to analyze certain types of allegations, e.g., force and search and seizure allegations. Including applicable Patrol Guide procedures and legal standards in this chapter is only to provide the investigator with an easy starting point when searching for relevant procedures and standards, and many times further research will be required. Knowing the applicable Patrol Guide procedure(s) and other legal standards governing a specific allegation is essential in being able to conduct a thorough investigation and make appropriate recommendations. Patrol Guide procedures are in many cases the basis upon which an officer’s conduct is judged. All allegations have a corresponding Patrol Guide procedure.

While assessment of an officer’s conduct should always be considered under applicable Patrol Guide procedures and other legal standards, that assessment should also occur within a framework of reasonableness and commonsense based upon the facts of each case.

Attempts and threats

Investigators may be confronted with situations in which the subject officer did not succeed in completing the alleged misconduct or threatened, but did not follow through with the alleged action. In such cases, the investigator should analyze the attempt or the threat as if the action had been completed. The investigator will subsequently analyze the attempt or the threat under the same Patrol Guide procedure for completed actions. That the action was attempted or threatened must also be reflected in the pleading language (before the verb describing the alleged misconduct), e.g. “OFFICER attempted to strike VICTIM with a...” or “OFFICER threatened to search VICTIM...” Threats should be pled as Abuse of Authority, while attempts should be pled as the category of FADO of the action which the officer allegedly attempted.

Supervisors and subordinates

Generally, if a supervisor directs a subordinate officer to take a specific action, the supervisor should be charged with the allegation. If the subordinate acts alone without the direct authorization of the supervisor, the subordinate should generally be charged with the allegation. In some other cases, whether the supervisor authorized the action is not clear. In cases where it is not clear whether the supervisor directed the action, the allegation may, depending on the circumstances, be pleaded against *both the supervisor and the subordinate* to prevent each officer from blaming the other should the case be substantiated and proceed to an administrative hearing.

When a supervisor is on the scene when alleged misconduct occurs, deciding against whom the allegation(s) should be pleaded will hinge on careful interviewing of all the officers to determine the supervisor's ability to authorize the action (i.e., did he/she see it and was he/she in a position to explicitly or implicitly authorize it) and communication that existed amongst the supervisor and his/her subordinate officers regarding action(s) that should be taken.

Additionally, *if* a supervisor was present and aware of a subordinate officer's actions, *and* in a position to have done something to prevent those actions, *then* the investigator should plead the allegation against the supervisor in addition to, or in place of, pleading the allegation against the subordinate. While this is a general rule of thumb, and will apply to nearly all allegations regarding stops, vehicle stops, and vehicle searches, the investigator most likely will need to consult with team supervision when determining whether or not to plead allegations against a supervisor in instances of frisks and searches, which stem from much more nuanced circumstances. In cases where the supervisor was not directly the subject of the allegation, but was present for the allegation and aware of it, investigators should plead the allegations as "SUPERVISOR participated in the [SPECIFIC ALLEGATION.]" In instances where the supervisor did not participate in the allegation, but failed to supervise officers who did commit misconduct, an OMN for failure to supervise should be pled. It is imperative that investigators, in consultation with their supervisor, confer with the Deputy Chief of Investigations and/or the Director of Quality Assurance and Quality Improvement when pleading these types of allegations against a supervisor.

FORCE—CATEGORIES, PLEADING LANGUAGE, AND APPLICABLE PATROL GUIDE PROCEDURES AND OTHER LEGAL STANDARDS

To ensure that the investigator properly analyzes force allegations, the investigator should review the chapter on investigating and analyzing force allegations. **That chapter also includes an analysis of the Patrol Guide procedures governing the use of force (PGP 221-01 - 221-08).**

A special note on animals: Historically, the CCRB has pleaded force used against animals as "Abuse of Authority: Property Damage." This, however, does not adequately express the alleged action. Moving forward, investigators should plead force against animals as "Force" and the category of force used. Wherever the investigator would plead [VICTIM], the investigator should plead [VICTIM's] {ANIMAL}, where {ANIMAL} is the category of animal against whom the force was used.

Gun Fired

Pleading language

"OFFICER fired his/her gun at VICTIM."

When this allegation should be pleaded

This is used when an officer fires his/her gun at someone. Should an officer fire their gun at a person's property, the pleading language should describe the targeted property, for instance: "OFFICER fired his/her gun at VICTIM'S ceiling" or "OFFICER fired his/her gun at VICTIM'S vehicle." Should an officer fire their gun at no ostensible target, such as in the air, the pleading language should read: "OFFICER fired his/her gun."

Nightstick as club (includes asp and baton)**Gun as club****Radio as club****Flashlight as club****Police shield****Other blunt instrument as a club****Pleading language**

"OFFICER struck VICTIM with a _____."

Vehicle**Pleading language**

"OFFICER struck VICTIM with a vehicle."

Hit against inanimate object (e.g., wall, ground, vehicle, tree or other)**Pleading language**

"OFFICER hit VICTIM against a _____."

When this allegation should be pleaded

This allegation should be pleaded only if it can be construed that the officer was using the inanimate object as a weapon, for example, if the alleged victim claims that his head was repeatedly slammed into a wall or into the doorway of a patrol car. If the civilian alleges that he was pushed into a car and it is reasonable to believe that the car was not being used as a weapon, this allegation should not be pleaded. Instead, the use of physical force should be pleaded as an allegation. NOTE: Hitting an individual with an object or against an object in the head is considered **deadly** physical force and should be analyzed accordingly (see the Force and Video Evidence chapter).

Sub-allegations

For statistical purposes, upon choosing the allegation "hit against inanimate object" within the CTS, the investigator must also specify the object against which the victim was hit by selecting the object from a sub-allegation menu (that appears when this allegation is selected).

Chokehold**Restricted Breathing****Pleading language**

"OFFICER used a chokehold against VICTIM."

"OFFICER restricted VICTIM'S breathing."

When this allegation should be pleaded

Whenever a complainant/victim alleges that an officer applied pressure to a person's throat or windpipe, an allegation of a chokehold should be pleaded. Whenever a complainant/victim alleges that an officer took any action which restricted the breathing of a person (such as sitting or standing on a person's chest, transporting a rear cuffed individual facedown, choked an individual such that they could not breathe or placing a hand/item over a person's face) an allegation of restricted breathing should be pleaded. Keep in mind that "restricted breathing" is not synonymous with a complete inability to breathe. Any action by an officer that is reasonably likely to reduce or inhibit breathing and does impede the free breathing of an individual may lead to the pleading of a restricted breathing allegation. Additionally, the Patrol Guide advises officers to position handcuffed individuals in a manner so as to promote free breathing, and an officer's failure to comply with this mandate when it is reasonably feasible to do so which negatively impacts an individual's ability to breathe may result in the pleading of a restricted breathing allegation. Finally, whenever a complainant victim alleges that an officer applied pressure to a person's throat or windpipe which restricted the breathing of the person, both a chokehold allegation and a restricted breathing allegation should be pled.

Pepper spray**Pleading language**

"OFFICER used pepper spray against VICTIM."

Physical Force (e.g. fought, punched/kicked/kneed, dragged/pull, pushed/shoved/threw, bit, or slapped)**Pleading language**

"OFFICER used physical force against VICTIM."

Sub-allegations

Upon choosing the allegation "physical force" within the CTS, the investigator must also select from a menu the sub-allegation that best specifies the type of physical force used. The sub-allegation menu will automatically appear when the physical force allegation is selected.

Handcuffs too tight**Pleading language**

"OFFICER tightly handcuffed VICTIM."

When this allegation should be pleaded

This allegation should be pleaded only if it is alleged that a civilian complained of pain and the officer subsequently re-tightened the handcuffs. Additionally, if a civilian alleges that their ankles were shackled in a similar manner, this allegation should be pleaded.

Nonlethal restraining device (e.g., restraining straps, and crook)**Pleading language**

"OFFICER used a _____ against VICTIM."

Sub-allegations

For statistical purposes, upon choosing the allegation “nonlethal restraining device” within the CTS, the investigator must also select from a menu a sub-allegation that specifies the type of device used.

Taser

Pleading language

“OFFICER used a Taser against VICTIM.”

When this allegation should be pleaded

This allegation should be pleaded anytime that it is alleged that an officer used a Taser, either with the prongs or in drive stun mode. The allegation should be pleaded for every cycle of the Tasing (e.g. the officer cycle once, then cycled again; or the officer cycled once, then used the Taser in drive stun).

Examples

An officer cycles through a Taser for five seconds and cycles again. The civilian removes the prongs and the officer drive stuns the civilian with the Taser. In this circumstance, three allegations of Tasing should be pleaded, one for each cycle and one for the drive stun.

An officer cycles the Taser once. Several seconds later the officer cycles through again. In this instance, two allegations of Tasing should be pleaded.

An officer drives stuns an individual, and another officer cycles once with the prongs. In this instance, two allegations should be pleaded, one against the officer who drive stunned and one against the officer who used the prongs.

Animal

Pleading language

“OFFICER struck the victim with a horse.” or “OFFICER allowed a dog to attack VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

PGP 221-18 (Departmental Use of Canine Teams) covers uses of force involving dogs.

Gun pointed

Pleading language

“OFFICER pointed his/her gun at VICTIM.”

When this allegation should be pleaded

This allegation should be pleaded anytime it is alleged that an officer trains his/her firearm at a civilian. If the officer's firearm is drawn, but not pointed, an abuse of authority allegation should be pleaded (see below).

Other

For any other force allegation not covered by the above allegations, the investigator should, after consultation with their Manager and the Deputy Chief of Investigations or Director of Quality Assurance and Quality Improvement, pick “other” from the drop-down menu and prepare pleading

language consistent with the style used in other allegations.

ABUSE OF AUTHORITY—CATEGORIES, PLEADING LANGUAGE, AND APPLICABLE PATROL GUIDE PROCEDURES AND OTHER LEGAL STANDARDS

To ensure that the investigator properly analyzes search and seizure allegations, the investigator should review the chapter on investigating and analyzing search and seizure allegations.

Question

Pleading language

“OFFICER questioned VICTIM.”

Stop

Pleading language

“OFFICER stopped VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 212-11 (stop and frisk) covers an officer’s authority to conduct a request for information or common law right of inquiry (either of which would be pleaded as a question) and a stop, for which reasonable suspicion is required. However, in most situations the investigator will need to consult case law to properly analyze these allegations.

When to split the single allegation into two allegations

Investigators should split “question” and “stop” into two separate allegations when analyzing an encounter during which the level of police intrusion rose from either a request for information or a common law right of inquiry to a forcible stop. Splitting the allegation into two separate allegations—“OFFICER questioned VICTIM” and “OFFICER stopped VICTIM”—prevents analyzing two different levels of intrusion requiring different legal justifications within the same allegation. If the encounter involved just a request for information or a common law right of inquiry, or constituted immediately a forcible stop, the investigator should not plead two separate allegations. At times, an officer may ask incriminating questions during a (vehicle) stop which do not pertain to the stop; in these instances, the investigator should plead a question allegation.

Frisk

Pleading language

“OFFICER frisked VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 212-11 is applicable to frisks for weapons.

Combining with other allegations

If force is employed incidentally to affect the stop and/or frisk, e.g., the officer pushed the complainant/victim against a wall, the investigator should categorize the allegation as an abuse of authority (rather than force). If the force used is not incidental to affecting the stop, e.g., the officer hit the complainant/victim with a gun, the investigator should plead a separate force allegation. Essentially, if the force would stand alone as a force allegation, it should be pleaded.

Search (of person or his/her possessions)

Pleading language

“OFFICER searched VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 212-11 is applicable to a search for a weapon subsequent to a frisk. To research the legal standards applicable to a search of a person or that person’s possessions, the investigator should examine Patrol Guide procedures 208-05 (arrest—general search guidelines) and 208-03 (arrests—general processing). Note that having an individual take a breathalyzer is considered a search of that person.

Strip-searched

Pleading language

“OFFICER strip-searched VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 208-05 (arrest—general search guidelines); Patrol Guide procedure 208-03 (arrest—general processing) discusses the documentation required after a strip-search is authorized.

When this allegation should be pleaded

Anytime it is alleged that the victim’s “undergarments (e.g. bra, underwear, etc.) and/or private areas are exposed or in which an individual’s clothing is removed, lifted up, or pulled down to expose undergarments or private areas” (PGP 208-05). Additionally, if it is alleged that an officer reached into the underpants of a civilian, and does not reach into the intergluteal cleft (the “crack” of the buttock) or vaginal cavity, a strip-search should be pleaded.

Treatment of allegation

In order to properly dispose of a strip-search allegation, the entirety of 208-05 needs to be taken into account. Strip-searches are one of the most invasive searches allowed the government and the process by which the strip-search is conducted is as important to the disposition as the justification of the strip-search. Patrol Guide procedure 208-05 states that an officer shall only conduct a strip-search after obtaining the approval of the officer’s supervisor. It also states that the officer must provide the supervisor with the factual basis for the strip-search and that the supervisor is responsible for ensuring that the strip-search is conducted properly. Failure to obtain approval of a supervisor to strip-search an individual renders the strip-search improper and as such should result in a substantiation against the officer who conducted the strip-search.

Patrol Guide Procedure 208-05 also states that strip-searches shall be conducted “in a secure area, in utmost privacy, and in the presence of only those members of the service reasonably necessary to conduct the strip-search.” Any strip-search conducted in any public or semi-public area (e.g. in a holding cell visible to other holding cells or passersby) is prohibited and is thus improper. In instances where a supervisor has approved the strip-search, it is the supervisor’s responsibility to ensure that the strip-search was conducted properly, and thus the allegation should be pleaded to the supervisor and if not conducted properly, substantiated. Determining someone’s gender alone is not a valid reason to strip-search an individual. In cases where an officer states valid reasons for strip-searching an individual, but also makes reference to having strip-searched an individual for this

purpose, squad leaders should alert the DCI and DQAQI and include this justification in the analysis of the allegation.

Vehicle stopped

Pleading language

“OFFICER stopped the vehicle in which VICTIM was an occupant.”

Applicable Patrol Guide procedure(s) and other legal standards

There is no applicable Patrol Guide procedure regarding the circumstances under which an officer can stop a vehicle. Instead, investigators should consult case law, which espouses a reasonable suspicion standard similar to that used in stopping a pedestrian. With respect to cases involving a checkpoint, the investigator should examine Patrol Guide procedure 221-16 (vehicle checkpoints).

Vehicle searched

Pleading language

“OFFICER searched the vehicle in which VICTIM was an occupant.”

Applicable Patrol Guide procedure(s) and other legal standards

There is no applicable Patrol Guide procedure regarding the circumstances under which an officer can search a vehicle. With respect to the conduct of an inventory search, the investigator should examine Patrol Guide procedure 218-13 (inventory searches of automobiles and other property). In most instances, the investigator will need to identify relevant case law to properly determine whether misconduct occurred.

Entry of premises

Pleading language

“OFFICER entered LOCATION.”

Search of premises

Pleading language

“OFFICER searched LOCATION.”

Applicable Patrol Guide procedure(s) and other legal standards

Search Warrants

- In cases in which the entry and/or search was based upon a search warrant, the investigator should assess whether the warrant was executed in accordance with the search warrant. The investigator should examine Patrol Guide procedure 212-75 (search warrant applications), Interim Order 41/2003 (search warrant execution) and New York Criminal Procedure Law §§ 690.30 and 690.50, which relate to the execution of search warrants. Other Criminal Procedure Law sections relating to search warrants are: §§ 690.05, 690.10, 690.15, 690.20, 690.35, 690.36, 690.40, 690.45, and 690.55.

Arrest/Bench Warrant

- In cases in which the entry and/or search was based upon an arrest or bench warrant, the investigator should examine Patrol Guide procedure 208-42 (arrest on a warrant) and New York Criminal Procedure Law § 120.80, which relates to the execution of arrest warrants. Other Criminal Procedure Law sections relating to arrest warrants are: §§ 120.20, 120.30, 120.50, 120.55, 120.70 and 120.90.

Exigent Circumstances

- When the entry and/or search was based upon exigent circumstances or emergency circumstances, the investigator should look up exigent circumstances and the emergency doctrine in Lexis-Nexis; the investigator should also review department training materials and administrative judicial decisions.

Consent

- If the entry and/or search was based upon consent, the investigator should look up consent in the Lexis-Nexis; the investigator should also review department training materials and administrative judicial decisions.

Hot Pursuit

- If the entry and/or search was based upon the hot pursuit exception, the investigator should look up hot pursuit in Lexis-Nexis; the investigator should also review department training materials and administrative judicial decisions.

Protective Sweep

- In cases in which the entry and/or search was based upon a protective sweep, the investigator should look up protective sweep in Lexis-Nexis; the investigator should also review department training materials and administrative judicial decisions.

Commercial Premises—Regulatory Schemes

- In cases in which the entry and/or search of a commercial premises was conducted pursuant to a regulatory scheme, the investigator should look up administrative searches in Lexis Nexis; the investigator should also review department training materials and administrative judicial decisions.

Indicating in CTS that allegation(s) stemmed from execution of search warrant

When allegations are inextricably linked to the execution of a search warrant, the investigator must so indicate within the CTS by checking the search warrant box on the closing report screen. Indicating that allegation(s) are inextricably linked to the execution of a warrant will, if the allegation(s) are exonerated, trigger a disposition letter informing the complainant and/or victim(s) that the allegation(s) were exonerated because the police had a search warrant and in executing that warrant, were entitled to forcibly enter a premises, draw their guns, etc. To trigger the proper disposition letter, the search warrant box must be checked.

Refusal to show search warrant

Pleading language

“OFFICER refused to show search warrant to VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable departmental procedure is Interim Order 41-1s.03 (search warrant execution), issued on February 13, 2004, in response to a recommendation made by the CCRB (that can be found on the agency's website). The interim order requires officers to show search warrants with and without no-knock provisions to occupants of the premises when able to do so safely and when requested by a civilian. The investigator should also examine Criminal Procedure Law § 690.50(1), which statutorily requires officers to show search warrants without a no-knock provision upon request to an occupant.

Refusal to show arrest warrant**Pleading language**

"OFFICER refused to show arrest warrant to VICTIM."

When this allegation should be pleaded

This allegation should be pled when all of the following conditions are met: 1) The arrest warrant is the basis for an arrest and/or entry, 2) A civilian in the house being entered asks to see it, and 3) The officer does not show it after it becomes safe to do so. In analyzing this allegation, the investigator should refer to the discussion under "refusal to show search warrant."

Gun drawn**Pleading language**

"OFFICER drew his/her gun."

Applicable Patrol Guide procedure(s) and other legal standards

When an officer draws his/her gun he/she is threatening the use of force; there is no actual use of force or attempt to use force and the investigator should not analyze the drawing of a gun as a use of force. The circumstances surrounding a decision to draw a firearm are briefly covered in a Note within Patrol Guide procedure 221-01 (force guidelines). However, to properly analyze an allegation the investigator may also need to review administrative judicial decisions.

Threat of arrest**Pleading language**

"OFFICER threatened to arrest VICTIM."

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 208-01 (law of arrest), which specifies that an officer has to have reasonable cause to believe an individual committed an offense. The investigator may also want to reference Criminal Procedure Law §§ 140.05 and 140.10 regarding arrest without a warrant. For violations and traffic offenses, Patrol Guide procedure 208-01 specifies that the officer must have observed the offense him/herself. In analyzing a threat of arrest or summons, the investigator should consider whether the officer actually had probable cause to make an arrest or issue a summons. The investigator may have to examine Penal Law statutes, Vehicle and Traffic Law statutes, or Administrative Code statutes to make such a determination.

Note that if the victim could have been arrested for anything, regardless of what the officer said the individual could be arrested for, this allegation should be exonerated.

When this allegation should be pled

This allegation should be pled in any instance where an officer informs someone that they could be arrested as a form of coercion or an inducement to comply with an officer's order. As noted above, whether a threat of arrest is a statement of fact has little bearing on whether the allegation should or should not be pleaded; this only has bearing on the disposition. Investigators should consult with supervision if there is any question as to whether this allegation should be pled.

Threatening Third Parties

On occasion, a civilian will allege that an officer attempted to coerce or induce them to comply with an order by threatening to take police action against another person. For instance, an officer tells a civilian that if they do not answer their questions the officer will arrest their relative. In those instances, the person to whom the threat is directed is always considered a victim of the allegation. Depending on the situation, the object of the police action might also be a victim of the allegation. When analyzing whether or not such a threat was misconduct, in addition to assessing whether the object of the police action could have been arrested, there must also be an assessment of whether (1) the order the officer wanted the recipient of the threat to comply with was lawful and (2) it was reasonable to connect the order with the potential arrest.

For threats against third parties, the pleading language allegation should be: "OFFICER threatened VICTIM with the arrest of VICTIM2."

Threat of summons**Pleading language**

"OFFICER threatened to issue a summons to VICTIM."

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 208-01 (law of arrest). In analyzing this allegation, the investigator should refer to the discussion under "threat of arrest."

Threat to notify ACS**Pleading language**

"OFFICER threatened to notify Administration for Children's Services."

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedures are 215-01 (care of dependent child), 215-02 (lost child) and 215-03 (emergency removals or investigation and reporting of abused, neglected, or maltreated children). In analyzing this allegation, the investigator should refer to the discussion under "threat of arrest."

Threat of force (verbal or physical)**Pleading language**

"OFFICER threatened VICTIM with the use of force."

Applicable Patrol Guide procedure(s)

The threat of force should be analyzed as if the force threatened was administered, which requires the investigator to determine whether that use of force would be justified under the circumstances.

The investigator must therefore refer to the Patrol Guide procedures and Penal Law provisions governing the circumstances under which officers are entitled to use force. In analyzing this allegation, the investigator should refer to the discussion above for force allegation(s) and the discussion under “threat of arrest.”

Property damaged

Pleading language

“OFFICER damaged VICTIM’S property.”

Applicable Patrol Guide procedure(s)

With respect to forcible entries or searches conducted pursuant to warrants which result in the damage to property, the applicable Patrol Guide procedures are 212-75 (search warrant applications), Interim Order 41/2003 (search warrant execution), and 208-42 (arrest on a warrant). Exigent circumstances, emergency circumstances, and hot pursuit may also justify a forcible entry that damages property. In most cases involving a search warrant, the damage that occurs incident to the entry to the home (e.g. doors, locks) and to the interior rooms (e.g. doors, windows), are to be pleaded as part and parcel with the entry. In other cases involving the damaging of property, the investigator should attempt to find an applicable Patrol Guide procedure or consult case law.

Seizure of property

Pleading language

“OFFICER seized VICTIM’S property.”

Applicable Patrol Guide procedure(s) and other legal standards

Some applicable Patrol Guide procedures are: 208-03 (arrests—general processing), which specifies the types of property that must and can be seized and vouchered during the arrest process; 218-19 (invoicing vehicles/property as arrest/investigatory evidence or for forfeiture proceedings or to determine true owner); 218-39 (seizure, removal, and disposition of property from general and food vendors); and 218-01 through 218-45 for other specified property. In many cases involving this allegation, the investigator must determine whether the officer had a reasonable basis for believing the property was evidence of a crime or whether seizure was necessary for safekeeping of the property at issue.

When this allegation should be pleaded

This allegation should be pled in those situations where an officer deprived an individual of their property for a significant period of time, usually when it has been brought to the stationhouse and requires the civilian to go through a formal process to regain possession. It should not be pled in those instances where officers momentarily take a person’s property, such as if an officer takes someone’s phone for the duration of an investigatory stop. This should not be construed to mean that no other allegations might be applicable to such an alleged action, just that momentary deprivations of possession in property are likely unsuitable for the seizure of property allegation. In many cases an allegation of seizure of property will be incidental to other police action, e.g., when property is seized pursuant to a warrant or property is vouchered after an arrest, and thus it may not warrant pleading. In any case where it is unclear whether or not this allegation should be pled, the investigator should consult a supervisor.

Refusal to process civilian complaint

Pleading language

“OFFICER did not process VICTIM’s complaint regarding (an) officer(s).”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedures are 207-31 (processing civilian complaints) and 207-30 (civilian complaints-witness statement).

When this allegation should be pleaded

This allegation only applies when a civilian wants to file a CCRB complaint against (an) officer(s). Any time an officer allegedly refused to process a complaint, or said they did not know how to process a complaint, or instructed the complainant to come back to the stationhouse at another time, or said that a sergeant or some other officer who was not immediately present needed to take the complaint, or told the complainant they needed to call or go to the CCRB or call 311, or gave any other reason for not processing a complaint against an officer, this allegation should be pleaded.

Refusal to provide name

Pleading language

“OFFICER refused to provide HIS/HER name to VICTIM.”

Refusal to provide shield number

Pleading language

“OFFICER refused to provide HIS/HER shield number to VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 203-09 reads:

Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so. Allow the person ample time to note this information.

When these allegations should be pleaded

These allegations should be pleaded in any instance where it is alleged that an officer refused a civilian’s explicit request for their name or their shield number respectively. If the civilian requested both forms of identification and the officer allegedly refuses to provide this information, both allegations should be pleaded. If the civilian allegedly requested both forms of identification and the officer allegedly only provided one, then the other allegation should be pleaded.

Officers can “otherwise provide” this information by, for instance, providing them with a business card, even if it is not required under the Right to Know Act (RTKA), which is represented in the Patrol Guide within procedures 203-09 and 212-11. In some instances, officers choose to provide their information on a summons rather than provide it verbally. Every instance is different, but in order for the summons to act as a proxy to providing this information, the summons must be clearly written and the civilian cannot have asked the officer for this information again. If the civilian requests this information again the officer should provide the information verbally to fully comply with the Patrol Guide, regardless of how clearly the information on the summons is written.

If the encounter requires that the officer proactively provide the civilian with a business card (see RTKA allegations), and the civilian requests the officer's name or shield number, and the officer allegedly fails to perform both actions, then the RTKA allegations and the appropriate refusal to provide name and refusal to provide shield number allegations should be pleaded. To reiterate, if the civilian requests this information and the officer is required to proactively provide a business card to the civilian and the officer provides the business card to the civilian, the officer has complied with 212-11 and 203-09.

Improper arrest

Pleading language

"OFFICER arrested VICTIM."

Improper summons

Pleading language

"OFFICER issued a summons to VICTIM."

When this allegation should be pleaded

As a matter of policy, the CCRB does not plead the allegation that an individual was issued a summons or arrested unlawfully in all the cases in which a civilian complains they were wrongfully arrested/summonsed. Many individuals claim that they were wrongfully arrested or issued a summons. Generally, the CCRB chooses not to exercise its jurisdiction over these allegations because: 1) prosecutors and courts ultimately make a decision on the validity of the charges and 2) it is unrealistic to expect the CCRB to handle all these types of complaints. If the complainant/victim claims that the police lied in arresting him/her, the CCRB generally refers the case to the Internal Affairs Bureau. If the complainant/victim alleges simply that he/she did not commit the act in question, the CCRB generally refers the complaint to the Office of the Chief of Department, when this is the only allegation. The CCRB, however, always retains its right to investigate an arrest or summons as an abuse of authority. When there are facts from which it may be concluded that an arrest or summons was issued without just cause, issued improperly or in retaliation for some act committed by the complainant/victim (e.g., the use of an obscenity, a challenge to the officer's authority, a request to obtain the officer's name or badge number, or a threat to file a complaint), the CCRB will investigate and plead this as an allegation.

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 208-01 (law of arrest), which specifies that an officer has to have probable cause to believe an individual committed an offense.

In analyzing an arrest or issuance of a summons, the investigator will have to determine whether the officer actually had probable cause to make an arrest or issue a summons. The investigator will have to examine the statutory provisions of the Penal Law, Vehicle and Traffic Law, or Administrative Code pursuant to which the individual was arrested or issued a summons to make such a determination. Police have broad discretion to issue a summons or make an arrest. Exercise of that discretion alone does not justify substantiation. For example, merely because an officer acted to issue a summons or make an arrest out of anger does not mean the allegation can be substantiated. The investigator must determine whether the individual committed the act at issue. If the officer had probable cause to arrest or issue the summons, the allegation may not be substantiated.

Whether to plead the allegation improper arrest or improper summons

At times, it can be difficult to determine when an arrest or summons should be issued in circumstances whereby an individual is taken to the stationhouse but not taken to central booking. In general, if the individual is released from the stationhouse with a *summons*, even though they were detained at the stationhouse, a summons allegation should be pled. If an individual is released from the stationhouse with a *desk appearance ticket* ("DAT"), that DAT should be treated as an arrest and an arrest allegation should be pleaded.

Failure to secure medical treatment

Pleading language

OFFICER failed to secure medical treatment for VICTIM.

When this allegation should be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer failed to secure medical treatment for a prisoner who requested it, even if the person was not visibly in need of medical treatment; an officer failed to secure medical treatment for a prisoner who was clearly in need of medical treatment, even if the prisoner did not specifically ask for medical treatment; when officers know that a civilian ingested narcotics and do not immediately take them to the hospital (prior to taking them to the stationhouse); when a civilian who is not in police custody requests medical assistance and no attempt to secure medical attention is made; when the delay in medical treatment is of a significant duration; or an officer interferes or obstructs medical treatment.

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedures are 210-04 (prisoners requiring medical/psychiatric treatment), 216-01 (aided cases general procedure), 208-02 (Arrest – processing), especially the "additional data" section "prisoner suspected of ingesting a narcotic or other dangerous substance," and 221-02 which states regarding the use of force and the necessity to obtain timely medical treatment. Included in 221-02 is a provision that MOS are required to report failure to secure timely medical treatment to IAB and may result in an OMN for failing to report.

Improper dissemination of medical information

Pleading language

"OFFICER disseminated information regarding VICTIM'S medical status."

Applicable Patrol Guide procedure(s)

The applicable Patrol Guide procedure is 216-11.

Search of digital recording device

Pleading language

"OFFICER searched VICTIM's recording device."

When this allegation should be pleaded

Investigators should plead this allegation when officers access or attempt to access any of the functions or content of a cellphone or digital recording device.

Electronic device information deletion

Pleading language

OFFICER deleted information on VICTIM'S electronic device.

When this allegation should be pleaded

This allegation should always be pleaded in conjunction with "search of digital recording device." To analyze, review the section on property damage above.

Interference with video recording

Pleading language

"OFFICER interfered with VICTIM's use of a recording device."

Applicable Patrol Guide procedure(s)

The applicable Patrol Guide procedure is 203-29 and 212-49 (incidents involving media representatives).

Threat to Take Action Based on Immigration Status

Pleading language

"OFFICER threatened to take action based on VICTIM'S immigration status."

When this allegation should be pled

This allegation should be pleaded in any instance where it is alleged that an officer explicitly threatens, or implies, that he or she may disclose, detain, or otherwise take action based on a person's real or perceived immigration status.

Improper dissemination of immigration status

Pleading language

"OFFICER disseminated information regarding VICTIM'S immigrations status."

When this allegation should be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer disseminated an individual's immigration status to other civilians or other city, state, or federal agencies.

Questioned regarding immigration status

Pleading language

"OFFICER asked about VICTIM'S immigration status."

When this allegation should be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer questioned an individual regarding their, or a third party's, status as a foreign national or as to their, or a third party's, immigration status.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedures 208-56 (foreign nationals) specifies actions to be taken when arresting or detaining any person who is not a citizen of the United States, regardless of immigration status or length of residency. Patrol Guide procedure 212-66 (confidential information and immigrant access to city service), defines immigration status as confidential information and details when and how a member of service may or may not disclose confidential immigration status to city, state, and federal agencies. Patrol Guide procedure 212-66 also broadly outlines instances when officers may inquire about a person's immigration status.

Cavity Search**Pleading Language**

"OFFICER performed a cavity search of VICTIM."

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer or officers removed something from an individual's body cavities, including but not limited to the rectum and mouth.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 208-05 prohibits officers from conducting a cavity search of any individual. If a foreign object is observed, pursuant to a strip-search, officers are to seek a search warrant and seek medical assistance of medical personnel to remove the object. Patrol Guide procedure 221-01 extends the prohibition to the search or removal of objects from an individual's mouth.

Photography/Videography**Pleading Language**

"OFFICER took (a) photograph(s)/recording(s) of VICTIM."

Applicable Patrol Guide procedure(s) and other legal standards

Operations Order 20 provides a list of situations when officers may and may not use their NYPD-issued smart phones or tablets to photograph or record incidents. Patrol Guide procedure 203-06 states that officers are prohibited from using personal electronic or digital recording devices to record or take photographs during any police encounter.

When should this allegation be pleaded

The allegation should be pleaded in any instance where it is alleged that an officer took photographs of or otherwise recorded civilians during the course of an interaction, but does not include those taken during routine processing (such as arrest photographs), when TARU personnel record demonstrations or protests as outlined under Patrol Guide procedure 212-71, or the use of body-worn cameras. Note that if the investigation determines that an officer uses their personal device to record or photograph the incident, the investigator should send a spin-off to OCD for the use of the personal device. The analysis of this allegation should focus on Operations Order 20.

Forcible Removal to the Hospital**Pleading language**

"OFFICER forcibly removed VICTIM to the hospital."

Applicable Patrol Guide procedure(s) and other legal standards

Forcibly removing an individual to the hospital is a significant infringement on that individual's freedom on par with a detention, and the Patrol Guide outlines a specific standard regarding when this action is permitted. Patrol Guide procedure 221-13 (mentally ill or emotionally disturbed persons) indicates that an officer must take into protective custody, and have removed to the hospital in an ambulance, any "person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others."

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an individual was involuntarily removed to the hospital under the authority, or with the assistance, of an officer. When an officer consults with a supervisor prior to taking this action, then the allegation should be pleaded against the supervisor instead of the officer.

Failure to consult a supervisor

In certain instances, officers must obtain the specific direction of a supervisor prior to attempting to take an individual into protective custody for removal to the hospital. Failure to adhere to this mandate will render such removal misconduct.

Threat of Forcible Removal to the Hospital**Pleading language**

"OFFICER threatened to forcibly remove VICTIM to the hospital."

Applicable Patrol Guide procedure(s) and other legal standards

The threat to forcibly remove an individual to a hospital should be analyzed as if the officer followed through with the threat, which requires the investigator to determine whether the officer would have been justified in removing the complainant/victim to the hospital against their will. In analyzing this allegation, the investigator should refer to the discussion above under "forcible removal to the hospital."

Failure to provide RTKA card**Pleading language**

OFFICER failed to provide VICTIM with a business card.

When this allegation should be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer failed to provide a business card that includes the officer's name, rank, shield number, and a space to write the command of the officer to the subject of any of the defined "law enforcement activities" enumerated in the Patrol Guide, which includes a level two or higher interaction with a civilian that did not result in arrest or summons, vehicle stops that did not result in arrest or summons, and roadblock or checkpoint stops (except for planned security checks at sensitive locations or street closures for public events or emergencies). The business card must also explicitly inform the civilian that they can call 311 to complain about their interaction with the officer. Note that this allegation does not require that the civilian request such information.

This allegation should also be pleaded in any instance where a civilian asked for the business card but the officer refused to provide it.

If a civilian who is not the subject of one of the enumerated “law enforcement activities” requested an officer’s name or shield number, or if such a request occurred during one of the exceptions to the requirement to provide a business card, investigators should look to the “refusal to provide name” and “refusal to provide shield number” allegations for guidance.

Applicable Patrol Guide procedures and laws

Patrol Guide Procedures 203-09 and 212-11 covers the provisions of the RTKA. Officers are not required to provide the business cards in interactions that are less than level two encounters; when the officer is undercover or law enforcement activity is taken pursuant to undercover activity; when there are exigent circumstances that require immediate action by the officer; the officer reasonably expects that s/he or another person is in physical danger or there is an imminent risk of property damage, or to forestall the imminent escape of a suspect or imminent potential destruction of evidence; or when an officer is conducting a security search of a person or property where the public building, facility, location, event, gathering, or MTA facility requires individuals to consent to a search the individual before entry (if requested in this circumstance, however, the officer must provide this information). Should the officer run out of cards, the officer is mandated to verbally provide the aforementioned information and provide the civilian ample time to write the aforementioned information.

In those situations where a civilian specifically asked for a business card, the officer is to provide it “as appropriate.” The qualifier “as appropriate” will require a case-by-case assessment, but in general should focus on the totality of the circumstances, especially as it pertains to any of the exceptions noted above, and the reasonableness of the refusal.

Other

For any other abuse of authority not covered by the above allegations, the investigator should, after consultation with their Manager and the DCI or DQAQI, pick “other” from the drop-down menu and provide pleading language consistent with the style used in other allegations.

ABUSE OF AUTHORITY—SEXUAL MISCONDUCT ALLEGATIONS, PHASE ONE

General Pleading Concerns

If a civilian specifically alleges that a remark or action that would constitute a sexual misconduct allegation was in fact sexual in nature, the allegation should likely be pleaded as such, and a full investigation will determine whether or not sexual misconduct occurred.

If an alleged action or statement is objectively sexual in nature, the CCRB will likely plead it as such even if the civilian does not specifically allege this.

Referrals

No Phase 1 Sexual Misconduct allegations should be referred or spun-off to IAB.

If one complaint includes Phase 1 and Phase 2 allegations, the Phase 2 allegations should be spun-off to IAB and the DA’s office, if applicable. If, after consultation with the Chiefs of Investigations (COI) or the DCI, it appears that the whole case should be referred with no portion retained by the CCRB, a memo outlining the reasons for referral should be sent to the Executive Director (ED) for

approval.

Mediation

All sexual misconduct allegations are ***NOT*** suitable for mediation. This includes not only Phase 1 allegations, but also anytime an allegation requires that the box labeled “Allegedly Sexually Motivated” be checked.

Questioning Civilians

When questioning civilians in regards to allegations that are or may qualify as sexual misconduct, focus on obtaining the objective facts and details of what occurred. What the officer said or did, or is alleged to have said or done, will be essential in assessing the evidence to ensure proper pleading and disposition of the allegations. Investigators should not ask what the civilian thought the motivation or intent of the officer was, and if the civilian alleges that an action or statement had a sexual or otherwise improper connotation the investigator should follow-up with questions that focus on what facts led the person to believe there was an inappropriate motivation.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 203-09 states that officers are to be courteous and respectful to civilians.

Patrol Guide procedure 203-10 stated that officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.

Patrol Guide procedure 210-01 describes the NYPD’s “zero-tolerance policy” toward all forms of sexual assault and sexual harassment of prisoners by other prisoners or any other person.

Patrol Guide procedure 205-36 describes employment practices of the NYPD; however, it provides useful definitions of sexual harassment and describes these acts as “prohibited both in the actual workplace and in any location regarded as an extension of the workplace.”

Sexual Misconduct (Sexual Harassment, Verbal)

Pleading Language

“OFFICER made (a) sexually suggestive remark(s) to VICTIM.”

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer said, wrote, texted, or typed sexually suggestive remarks.

Sexual Misconduct (Sexual Harassment, Gesture)

Pleading language

“OFFICER made (a) sexually suggestive gesture(s) towards VICTIM.”

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer made a sexual gesture towards a civilian.

Sexual Misconduct (Sexual Humiliation)

Pleading Language

“OFFICER sexually humiliated VICTIM.”

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer exposes the civilian to actual or probable ridicule or embarrassment, or ridicules or embarrasses a civilian, of or relating to their sexual organs or sexual activity.

Sexual Misconduct (Sexual or Romantic Propositions)

Pleading Language

“OFFICER propositioned VICTIM.”

When should this allegation be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer suggests or offers sexual intercourse, sexual activity, or romantic overtures to a civilian.

Allegedly Sexually Motivated Check Box

A check box labeled “Alleged Sexually Motivated” appears in the CTS for the following allegations: arrest, stop, frisk, search of person, strip-search, vehicle stop, photography/videography, summons, and abuse-other. This box should be checked anytime a civilian alleges that the officer undertook any of these actions with a sexual motivation. The investigator should ***NOT*** solicit this information unless the civilian alleges it of their own accord. If a civilian makes such an assertion, the investigator should inquire further as to why the person believes that the allegation was sexually motivated. If the investigation determines that the action was sexually motivated, the Squad Leader should consult with the DCI or the DQAQI. Only after this consultation at the conclusion of the investigation, when there has been a determination that there is a preponderance of the evidence to substantiate both the conduct and the alleged sexual motivation, will the following allegations be pleaded.

Sexual Misconduct (Sexually Motivated Stop)

Pleading Language

“OFFICER conducted a sexually motivated stop of VICTIM.”

Sexual Misconduct (Sexually Motivated Frisk)

Pleading Language

“OFFICER conducted a sexually motivated frisk of VICTIM.”

Sexual Misconduct (Sexually Motivated Search)

Pleading Language

“OFFICER conducted a sexually motivated search of VICTIM.”

Sexual Misconduct (Sexually Motivated Strip-Search)

Pleading Language

“OFFICER conducted a sexually motivated strip-search of VICTIM.”

Sexual Misconduct (Sexually Motivated Vehicle Stop)

Pleading Language

“OFFICER conducted a sexually motivated stop of the vehicle in which VICTIM was an occupant.”

Sexual Misconduct (Sexually Motivated Photo/Video)

Pleading Language

“OFFICER took (a) sexually motivated photograph(s)/recording(s) of VICTIM.”

Sexual Misconduct (Sexually Motivated Summons)

Pleading Language

“OFFICER’S issuance of (a) summons(es) to VICTIM was sexually motivated.”

Sexual Misconduct (Sexually Motivated Arrest)

Pleading Language

“OFFICER’S arrest of VICTIM was sexually motivated.”

DISCOURTESY—CATEGORIES, PLEADING LANGUAGE, AND APPLICABLE PATROL GUIDE PROCEDURES AND OTHER LEGAL STANDARDS

Word

Pleading language

“OFFICER spoke discourteously to VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact). If the discourtesy occurred, the investigator must also determine if the officer committed misconduct. Administrative law judges have routinely held that an officer’s use of curse words or obscenities during stressful, dangerous street encounters, particularly those where an officer suspects that he/she is confronting a violent or armed individual, is not necessarily misconduct. Generally, investigators need to take into account the totality of the circumstances, the nature of the encounter, and the law enforcement purpose of the profanity.

Number of allegations

Proper analysis focuses on the question of whether the officer spoke discourteously to the victim and if so, whether the discourtesy constitutes misconduct. The investigator should not generally analyze whether each phrase used by the officer was justified. If in the aggregate the officer’s use of obscenity, for instance, was justified, then it should be exonerated. If in the aggregate it was not justified, the allegation should be substantiated.

If the use of discourtesy allegedly took place in different locations or under a different set of circumstances, i.e., pre and post-apprehension, it will be necessary to draft separate allegations of discourtesy.

Gesture

Pleading language

“OFFICER gestured discourteously towards VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact). To analyze this allegation, the investigator should refer to the discussion under “word.”

Action

Pleading language

“OFFICER acted discourteously toward VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under “word.”

When should this allegation be pleaded

This allegation can cover a wide range of behavior, including those that are similar to other categories of allegations but that do not meet the threshold or fully fit the criteria for that allegation. For instance, there are some types of physical contact that do not rise to the level of an allegation of force, but due to the context of the interaction may merit pleading as a discourteous action. Additionally, an officer momentarily taking someone’s property, such as a cell phone to end a phone call conversation, could not fit within either a seizure of property or interference with recording device allegation, but may be appropriately handled under a discourteous action allegation. An investigator encountering behavior that may rise to the level of this allegation should consult with supervision.

Other

For any other discourtesy not covered by the above allegations, the investigator should, after consultation with their Manager and the DCI or DQAQI, pick “other” from the drop-down menu and provide pleading language consistent with the style used in other allegations.

OFFENSIVE LANGUAGE—CATEGORIES, PLEADING LANGUAGE, AND APPLICABLE PATROL GUIDE PROCEDURES AND OTHER LEGAL STANDARDS

Race (e.g., black, Hispanic, white, Asian, or American Indian)

Pleading language

“OFFICER made remarks to VICTIM based upon race.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). Though officers in many situations are justified in using discourteous language, offensive language, such as

racial epithets, is never appropriate since it “undermines the effectiveness and professionalism of the police and reveals bigotry on the part of those who use such terms.”

Sub-allegations

For statistical purposes, upon choosing the allegation “race” within the CTS, the investigator must also select from a menu the sub-allegation that specifies the race upon which the remarks were allegedly made.

Ethnicity (Puerto Rican, Italian, Chinese, French, etc.)

Pleading language

“OFFICER made remarks to VICTIM based upon ethnicity.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under “race.”

Religion (e.g., Jewish, Muslim, Rastafarian, Buddhist, Christian, or atheist)

Pleading language

“OFFICER made remarks to VICTIM based upon religion.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under “race.”

Sub-allegations

For statistical purposes, upon choosing the allegation “religion” within the CTS, the investigator must also select from a menu the sub-allegation that specifies the religion upon which the remarks were allegedly made.

Sex

Pleading language

“OFFICER made remarks to VICTIM based upon sex of VICTIM.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under “race.”

Gender Identity

Pleading language

“OFFICER made remarks to VICTIM based on gender identity.”

When this allegation should be pleaded

This allegation should be pleaded in any instance where it is alleged that an officer used discourteous or disrespectful terms/phrases regarding a civilian’s gender identity or gender expression.

Additionally, this allegation should be pleaded in any instance where it is alleged that an officer does not use a preferred pronoun, name, or honorific that is consistent with the gender identity expressed by the individual. This includes gratuitous commentary on an individual's anatomy. Additionally, depending on the context, improperly questioning someone regarding their gender identity may fall under this allegation.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide Procedure 203-10 requires that officers refer to civilians using names, honorifics, and pronouns consistent with the gender identity as expressed by the individual, whether or not these are reflected on the individual's legal documents. Officers are also prohibited from using discourteous or disrespectful terms/phrases regarding someone's gender identity and expression.

Additional considerations

Officers are not allowed to question arrestees regarding their gender identity or expression without a reasonable basis to do so. The Patrol Guide does not specify when or if officers are allowed to question an individual who is not under arrest as to their gender identity or expression. Should this arise, squad leaders should consult with the DCI and the DQAQI.

Sexual orientation (e.g., gay, lesbian, or bisexual)

Pleading language

"OFFICER made remarks to VICTIM based upon sexual orientation."

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under "race."

Sub-allegations

For statistical purposes, upon choosing the allegation "sexual orientation" within the CTS, the investigator must also select from a menu the sub-allegation that specifies the orientation upon which the remarks were allegedly made.

Physical disability

Pleading language

"OFFICER made remarks to VICTIM based upon physical disability."

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 203-10 (public contact—prohibited conduct). To analyze this allegation, the investigator should refer to the discussion under "race."

Other

For any other type of offensive language not covered by the above allegations, the investigator should, in consultation with their Manager and the DCI or DQAQI, pick "other" from the drop-down menu and provide pleading language consistent with the style used in other allegations.

OTHER MISCONDUCT—CATEGORIES, PLEADING LANGUAGE, AND APPLICABLE PATROL GUIDE PROCEDURES AND OTHER LEGAL STANDARDS

Failure to prepare memo book entries

Pleading language

“OFFICER failed to prepare a memo book entry as required by [PATROL GUIDE PROCEDURE].”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 212-08 (activity logs).

Failure to prepare a stop and frisk report

Pleading language

“OFFICER failed to prepare a stop and frisk report as required by [PATROL GUIDE PROCEDURE].”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable Patrol Guide procedure is 212-11 (stop and frisk).

When this OMN should be pleaded

When the investigator determines that the police took action that required the preparation of a stop and frisk report and generally when there is no other documentation of the stop (e.g., by virtue of a summons or arrest), the investigator should consider making this recommendation.

False official statement

Pleading language

There is evidence suggesting OFFICER provided a false official statement in violation of PG 203-08.

Applicable Patrol Guide procedure(s) and other legal standards

During the course of an investigation, an investigator may gather evidence indicating that an officer has made a false official statement. In all cases where a false official statement may be present, investigators should consult with their Manager and the DCI or DQAQI as they analyze this issue.

The applicable Patrol Guide procedure is 203-08 (making false statements), which states in part: “The intentional making of a false statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances.” Prior to the start of every interview with an officer, investigators ask the officers to acknowledge that they have read and understand section 203-08, and that the penalty for making a false official statement can include termination.

Proving a false official statement requires a showing of three elements by a preponderance of the evidence: (1) that the officer made a statement; (2) that the statement was material; and (3) that the statement was intentionally false. *See Dep’t of Correction v. Centeno*, OATH Index No. 2031/04 (2005). With respect to the first element, officer testimony in CCRB interviews, officer statements in official NYPD documents (such as memo books, UF-250 forms, arrest reports, etc.), and officer affidavits in

criminal court complaints and other sworn court documents, all constitute “statements,” as well as “official statements.” With respect to the second element, an officer’s statements are “material” if they relate to his or a fellow officer’s actions or justifications in an incident, and affect the outcome of the investigator’s finding.

A statement is “intentionally false” if it consists of a specific factual claim that is knowingly false, not simply inadvertently inaccurate. Examples of specific factual claims include instances where an officer denies or claims doing something; where an officer denies or claims to have seen something; and certain instances where an officer’s account dramatically differs from the reliable accounts of fellow officers and/or civilians. In assessing “intent,” investigators should focus on whether the officer has something to gain by making the false statement or something to lose by reporting that fact truthfully, including minimizing culpability or involvement by himself or fellow officers, or enhancing his justification for an action.

In certain circumstances, an officer’s failure to recall events may suggest that the officer is providing a false official statement. Factors to review in “failure to recall” situations include, but are not limited to: the proximity in time between the incident and the officer’s interview; whether the officer’s reflection can be refreshed using documents or video and audio evidence; whether the nature of the incident would be one that the officer would reasonably be expected to remember; and whether the officer’s lack of memory regarding portions of an incident is credible in light of what the officer does remember about the incident. Simply because the investigator has found one account more credible than the subject officer’s account does not mean that the investigator should recommend that the board note other misconduct.

Examples of cases where false official statements have been noted include: (1) situations where an officer’s statements in CCRB interview contradict video or audio evidence; (2) situations where an officer’s statements in CCRB interview contradict NYPD documents (memo books, command logs, UF-250s, SPRINT reports); (3) situations where an officer’s statements contradict the officer’s statements in IAB interview; (4) situations where an officer’s statements in CCRB interview contradict officer’s sworn criminal court complaint or other sworn court applications (e.g. warrant affidavits); (5) situations where an officer’s statements in CCRB interview contradict reliable statements by fellow officers or civilian witnesses; and (6) situations where an officer claims in CCRB interview not to recall the incident, but other evidence confirms the officer’s involvement and CCRB interview is close-in-time to incident.

During interviews of officers, investigators should ask questions to ensure that they have a clear answer by an officer with respect to a particular issue. Investigators should follow up with additional questions if an officer provides an equivocal or ambivalent response. Wherever possible, after providing the officer with an opportunity to describe the incident in detail, investigators should present the officer with any discrepancies between that description and other accounts of the incident (whether in video, documents, or other officer or witness statements) in order to provide the officer with an opportunity to explain the discrepancy.

Within the body of the closing report, investigators should note each relevant and material assertion of fact that the evidence indicates is false. For each fact, the investigator must discuss: 1) the evidence that indicates that the assertion of fact is false; and 2) the evidence that indicates that the false statement was made intentionally, i.e., not a justifiable failure of memory or unintentional mistake. Where the false statement is made in a CCRB interview, the question(s) posed to the subject and the answer(s) embodying the allegedly false statement(s) of fact should be quoted directly. Investigators

should explain their basis for inferring that the officer made the statement “intentionally,” such as including an explanation of what the officer has to gain or lose from the false statement.

While administrative case law does not require that the testimony of a single witness in a false statement case be corroborated, investigators should understand that in a criminal context, perjury in most cases cannot be proven based on the testimony of a single witness. Since administrative law courts often look to the criminal law for guidance in assessing evidence, there should generally be strong corroborative evidence to support a recommendation that the officer intentionally made a false statement.

If an investigator encounters a situation where he or she believes that an officer intentionally made a material omission in a statement, the investigator should speak to a Squad supervisor and the DCI or DQAQI.

Other: Failure to document preferred name

Pleading language

“OFFICER failed to document the preferred name of VICTIM.”

When this OMN should be pleaded

This OMN should be pleaded in any instance where it is alleged that an arrestee provided an officer with their preferred name and the officer does not document this name on the OLBS Arrest Report, Prisoner Pedigree Card, and the Prisoner Movement Slip.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide Procedure 208-03 requires that officers in-put a person’s preferred name on the *Prisoner Pedigree Card*, *Prisoner Movement Slip*, and the *On Line Booking System (OLBS) Arrest Report* under “Nickname/ Alias/ Maiden Name” prefaced by “P-.”

Other: Failure to properly document a search

Pleading language

“OFFICER failed to properly document a search.”

When this OMN should be pleaded

This OMN should be pleaded in any instance where it is alleged that an arrestee requested to be searched by an officer of a specific gender, this request was not honored, or there was no notation in the command log as to why this request was not honored or who conducted the search.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 208-05 states that arrestees are to be searched by an officer of the gender of the arrestee’s preference unless to do so is not possible. If it is not possible, the desk sergeant must provide a detailed note in the command log as to why it was not possible and the name of the officer who searched the individual.

Other: Failure to prepare a Threat, Resistance, Injury Report

Pleading language

“OFFICER failed to prepare a Threat, Resistance, or Injury Report.”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 221-03 (reporting and investigation of force incident or injury to persons during police action.)

Other: Failure to prepare an AIDED report

Pleading language

OFFICER failed to prepare an AIDED Report.

Applicable Patrol Guide procedure(s) and other legal standards

216-01 (aided cases general procedure)

Other: Failure to document force

Pleading language

“OFFICER failed to document the use of force on the arrest report as required by [PATROL GUIDE PROCEDURE].”

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 208-15 (Arrest Report Preparation at Stationhouse).

Other: Failure to properly document a strip-search

Pleading language

OFFICER failed to properly document a strip-search.

When to plead

This OMN should be pleaded in any instance where the approving supervisor or designee did not properly document a strip-search in the command log. Additionally, this should be pleaded in any instance where the arresting officer failed to notate that a strip-search was conducted in the arrest report, prisoner movement slip, and their memo book.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 208-03 (arrest—general processing) discusses the documentation required after a strip-search is authorized.

Improper use of body-worn cameras

Pleading Language

“OFFICER improperly used his/her body-worn camera.”

Applicable Patrol Guide procedure(s) and other legal standards

The applicable guidelines are Patrol Guide Section 212-123 (Use of Body-Worn Cameras).

When this OMN should be pleaded

When the investigator determines that an officer who has been issued a body-worn camera (BWC) for at least 90 days failed to turn on the device at the start of the tour, and/or failed to activate the BWC during a mandatory event when it was feasible and safe to do so, and/or terminated the activation

before such an incident has concluded, **the investigator should make this recommendation.**

When determining if recording terminated prematurely, the following issues should be kept in mind:

- MOS must stop recording if a victim/witness requests anonymity provided that an offender is not present or there is a conflict with the prohibited recording list.
- MOS may stop recording if the recording commenced due to the nature of a radio run but the MOS determined that there was no crime, no offender was present, and the matter involved sensitive or personal information.
- MOS may stop recording if the original reason for the recording terminated, there are no alleged offenders still at the location, and the MOS is still on the scene tertiary police activity, such as crime scene security or traffic control, etc.

Other: Failure to document consent

Pleading Language

OFFICER failed to properly document a consent to search as required by Patrol Guide procedure 212-11.

When should this recommendation be made

This recommendation should be made in any instance where an officer asserts that consent was obtained to search an individual's person, vehicle, or home but failed to document the consent.

Other: Failure to properly document a strip-search

Pleading language

OFFICER failed to properly document a strip-search.

When to plead

This OMN should be pleaded in any instance where the approving supervisor or designee did not properly document a strip-search in the command log. Additionally, this should be pleaded in any instance where the arresting officer failed to notate that a strip-search was conducted in the arrest report, prisoner movement slip, and their memo book.

Applicable Patrol Guide procedure(s) and other legal standards

Patrol Guide procedure 208-03 (arrest—general processing) discusses the documentation required after a strip-search is authorized.

Other: Failure to supervise

Pleading language

OFFICER failed to supervise ALLEGATION

When to plead

This OMN should be pleaded in any instance where the investigation determined that a supervisor had a duty to supervise officers, where misconduct occurred, and where the supervisor did not participate nor intervene. This does not cover instances where a supervising officer tacitly approved the action by being present for the entirety of the incident while not necessarily participating, but instances where a supervising officer had an affirmative duty to supervise and failed to supervise (see above under "Supervisors and subordinates").

Other

For any other non-FADO misconduct not covered by the above allegations, the investigator should, in consultation with their Manager and the DCI or DQAQI, pick "other" from the drop-down menu and prepare pleading language consistent with the style used in other allegations.

While not offered in the drop-down menu within the CTS, investigators should be aware of some other theories under which officers can be charged with other misconduct.

Under Patrol Guide procedure 207-21, officers have an absolute duty to report corruption or serious misconduct, including the use of excessive force, that is committed by a member of the service whether on or off-duty. The officer who observes or becomes aware of such use of force and fails to make a report, (either anonymously or by identifying him/herself), can be cited for other misconduct under Patrol Guide procedure 207-21. Citing an officer for failure to report serious misconduct should be used sparingly and only after consulting with supervisors. Supervisors are advised to consult with the DCI, DQAQI, and/or the Chiefs of Investigation.

With respect to the use of force, Patrol Guide procedure 203-11 states that officers present at, though not directly involved in, a police action are required to maintain control or intervene if the use of force against a subject clearly becomes excessive. Where there is strong evidence that misconduct occurred, in unusual cases it may be appropriate to cite supervisors or nonparticipating officers for other misconduct under Patrol Guide procedure 203-11. Again, this section should be used only after consultation with supervisors, who are advised to consult with the DCI, DQAQI, and/or the Chiefs of Investigation.

APPENDIX
**Allegation Metaphysics:
An Introduction**

Categories, Allegations, and Sub-Allegations

The CCRB's jurisdiction extends to four general categories, Force, Abuse of Authority, Discourtesy, and Offensive Language (FADO). Each of these categories relate to specific allegations in the way that a genus relates to a species in biology. There is no such thing as an "Abuse of Authority" without a specified allegation like there is no such thing as a "bird" without it being a specific species of "bird." This is because the categories of the CCRB's jurisdiction describe a relationship of allegations, of which there are several iterations. As the CCRB receives more evidence, new laws are drafted, and new Patrol Guide Procedures put in place, the CCRB discovers additional iterations of these categories which are then formalized into allegations. As with all general categories, it is impossible to provide an exact definition with absolute guidelines (it would either be too broad or too restrictive); instead the allegations share a family resemblance categorized under FADO.

What is an allegation?

All allegations require a two-step process. An allegation is at once to posit as true, with or without evidence, and a process of "naming." The first stage of an allegation is the amorphous collection of posited facts, data that has not yet been named, from a source external to the investigation. The most common form that the CCRB obtains these facts is from civilian accounts of an interaction; however, the CCRB often encounters allegations during an investigation from documentary, audio, or video sources. The process of naming the posited action, what the CCRB traditionally calls drafting pleading language, is the most sensitive and often most complicated aspect of the job. Civilians posit a version of "what happened" during the incident, but they do not determine what constitutes misconduct. Naming, or pleading, is the process of objectively categorizing actions under a category culled from the NYPD's Patrol Guide, the NY Penal Code, or case law. The investigator pleads allegations, using the above referenced sources as guides.

Complainant/victims do not determine *what* is pleaded; instead, complainant/victims provide the raw material for what will become an allegation. While the investigator can take into account the subjective impressions and assertions of the civilian in the determination of what constitutes an allegation, the investigation is not dependent upon these subjective evaluations in the naming of the allegation.

For example, an officer uses the term "fuck" throughout an interaction. The complainant/victim tells the investigator that they did not take umbrage with the officer's use of profanity and is instead complaining about the traffic summons that they claim that they did not deserve. The investigator evaluates the posited actions of the officer not from the point of view of the actual offense that the profanity caused the civilian, but the objective standard set forth by the Patrol Guide as to the officer's conduct. The investigator would "name" or "plead" the use of the discourtesy in this case regardless of the civilian's subjective determination that the conduct did not affect them.

Allegations not being pleaded

Often conduct that appears to be "exonerable on its face" is deemed to "not rise to the level of misconduct," but this is an inaccurate way to view questions of pleading. The question of whether conduct is "exonerable on its face" or not includes within it the notion that an allegation was made. Thus, the central contradiction to the argument not to plead something because it is "exonerable on its face" is that it presupposes that an allegation was pleaded at all. This is called a self-referential inconsistency and it is odious to the well-ordered rationality of logic. This is not to say, however, that there is never a time that conduct described by a civilian will not be pleaded, only that the argument from the point of view of exonerability is never a good argument not to plead something. To exonerate is to lift the burden from the accused. The question put to the CCRB is, who determines

what conduct is accused? Given the above, there are two parties who determine what conduct is accused. The civilian provides the raw material for the accusation, but the CCRB evaluates the raw material and organizes this material into a coherent whole. That is to say, the act of pleading is the act of giving form to content.

This argument also belies a fundamental error in thought regarding the nature of allegations. While all allegations, in principle, have the capacity to be substantiated, which is to say, all allegations point toward a set of boundaries that could potentially be crossed by an officer, whether or not the particular circumstances (the raw material) fit into the acceptable and/or unacceptable range of conduct prescribed by these guidelines are not the basis for which something will be pleaded or not pleaded.

This is why the two-step process is central to the determination of an allegation. Allegations are not rigid categories with a one to one correspondence to an action. They are categories that translate a described action into the legal language that governs the CCRB's jurisdiction. Civilians describe several actions of any given officer and these actions are primarily innocuous and are imperative for any being with a physical body interacting with physical objects (e.g. the officer opened the door of her vehicle, the officer walked down the street, the officer was standing on the subway platform). The issue of pleading arises when a described action could be considered to fall within the particular guidelines that constitute the CCRB's jurisdiction. The only argument for not pleading an allegation for an action is that the conduct does not fall within the guidelines of the CCRB's jurisdiction as iterated by the CCRB's allegations.

Force

Perhaps one of the categories that is least prone to ambiguity is force allegations. While the particular allegation can be ambiguous, that the alleged conduct falls into the category of force typically coheres with the average everyday concept of force:

1. The action involves physical contact (whether that be body-on-body contact or through an intermediary object (e.g. ASP, firearm, shield);
2. The action be of sufficient intensity;
3. The action is not sexual in nature.¹

Abuse of Authority

Due to the intrinsically ambiguous nature of category "Abuse of Authority," its propensity toward misinterpretation, and the fluid laws and guidelines under which officers operate, this is an area of the CCRB's jurisdiction that sees regular changes to the sub-allegations under this conceptual umbrella. The hallmarks of Abuse of Authority are:

1. A discrete act by (an) officer(s) (or failure to act when there is an affirmative duty to do so) that
 - a. Can be analyzed solely on the basis of the discrete incident itself (i.e. the analysis cannot rely on a pattern of actions), which
 - b. Restricts or inhibits the rights of a civilian that

¹ In February of 2018, the Board unanimously voted to include "sexual misconduct" as an Abuse of Authority allegation. This does not mean that a case will not include both a sexual misconduct allegations and force allegations, just that the heart of the force allegation, the determining factor, is not the sexual misconduct, but the force applied.

- c. Is clearly delineated in the Patrol Guide or proscribed by law, such that it can be analyzed using objective criteria, and
- d. The act is not intrinsically criminal in nature.²

Discourtesies

Given that there is no definitive list of discourteous statements or actions, the following is a list of guidelines for considering when to allege a discourtesy:

Given the totality of the circumstances, could a reasonable observer perceive an officer's action as "discourteous" based on the following:

1. An officer's actions served no legitimate law enforcement purpose;
2. An officer's actions appear to "purposefully" escalate the interaction; and
3. An officer undermines the person's agency, integrity, or social standing.

While the reasoning behind the decision to plead a discourtesy allegation often appears to be co-substantial with the possibility of substantiating it (that is to say, if the investigation determines that the alleged conduct occurred then the consequent analysis would include a substantiation), this is not always the case. The alleged conduct may be terms that are universally recognized to be discourteous, the most common of which is "fuck," but given the stressful nature of the circumstances (e.g. telling someone to "put the fucking gun down") would be exonerated. In these instances, the allegation is not co-substantial with the disposition, but this does not mean that it is not an allegation.

Offensive Language

The pleading of offensive language is co-substantial with its disposition in so far as the investigation's role is to determine the facts, and if the facts confirm the allegations, the allegation will be substantiated. Offensive language allegations will always violate the three guidelines regarding discourtesies, with an additional guideline:

4. The officer's action implicates race, ethnicity, sexual orientation, gender, gender identity, disability, or another protected status.

Offensive language, proximately and for the most part, refers to words that prima facie denigrate all persons who make up the class of individuals comprising the targeted group based on their protected status. As such they are inappropriate in all contexts and such an allegation does not require that the officer correctly determine the individual's identity that is implicated. The identity of the victim of the allegation and the identity of the subject of the allegation is irrelevant in determination of the pleading of an offensive language allegation. For example, if an officer calls an individual a derogatory term for homosexual or a racial epithet, this is prejudicial conduct regardless of the victim's or officer's actual sexual orientation or race. The same is true for the other categories.

² While there are instances in which an officer's conduct is at once outside of guidelines *and* criminal in nature that the CCRB investigates, these allegations (e.g. discharging a firearm) are analyzed on the basis of the officer's performance of their job and not on the criminal nature of their conduct (hence why the CCRB does not investigate homicide, but it does investigate excessive application of force that results in the death of a civilian). Further this is why the CCRB does not investigate corruption. If an officer plants drugs on a civilian, there is never a time in which that act is proper in the administration of the officer's duties and there is never a time when that is not a criminal act. Sexual Misconduct (phase 2) is an exception to this rule (e.g. there is never a time when prohibited sexual conduct by an officer is proper in the administration of the officer's duties and not a criminal act) and thus required a resolution by the Board.

Chapter Seven: Complaints Stemming from Special Events

Introduction

Complaints stemming from parades, demonstrations, rallies or other events (e.g., the New Year's Eve celebration in Times Square) at which the NYPD employs planned post assignments pose significant challenges for the CCRB. Identifying officers and civilian witnesses, victims can be challenging. The NYPD assigns officers from both uniformed and plainclothes commands from around the city to police these types of events. More frequently than usual, individuals may file complaints regarding incidents witnessed by numerous individuals and involving alleged victims for whom they have no identifying information. This chapter details how investigative squads should approach these complaints, particularly when a large number of complaints have been filed relating to a single event. It also reviews documentary evidence available to identify officers, alleged victims, and civilian witnesses, some of which is unique to these events.

Incidents that arise during special events commonly involve new media coverage and video footage. This being the case, these cases are typically assigned as sensitive cases

How to Organize Investigations of “Special Event” Complaints

CASE ASSIGNMENT POLICIES

The investigative squad that receives the initial complaint regarding a "special event" should expect to be assigned all future complaints regarding the policing of that event. The squad should apprise the Chief of Investigation and the Deputy Chiefs of Investigation regarding receipt of such a complaint so that, if appropriate, the Intake Unit and other squads can be made aware that related complaints should be assigned to that specific squad. The Chief of Investigation or the Deputy Chiefs of Investigation may also decide to characterize the complaint(s) as ones that should appear on the agency's sensitive case list. In certain cases, the Chief of Investigation will also act as a liaison between the CCRB and IAB commanders to expedite requests for New York City Police Department records.

To the extent possible, a limited number of complaints stemming from a single incident within a larger event should be assigned to an individual investigator. If sufficient complaints are filed to make assignment to an individual investigator impracticable, squad leaders should assign complaints to multiple investigators based upon the geographic location of the incidents at issue.

SUPERVISORY ROLE IN INVESTIGATION OF COMPLAINTS

The role of squad leaders as investigations progress will differ depending upon the number of

complaints assigned to their squad. If complaints can be assigned to a single investigator, squad leaders should ensure that that investigator is aware of the documentary evidence that should be obtained and the other investigative steps that must be taken, and can assist the assigned investigator in completing these tasks. However, if multiple investigators are assigned cases within a single squad, squad leaders will have to prepare and coordinate mass document requests and organize acquired documentary evidence that must be shared amongst the assigned investigators. These materials include, as described in this chapter: maps of complaints and/or arrests; records requests; police department plans for the special event; post maps; detail rosters; arresting officer photographs; arrestees' photographs; photographs of detailed officers; recordings (digital, film, video, and/or audio) of the event; and print media coverage of the incident. These resources should be copied and incorporated into individual case files as is appropriate.

PRELIMINARY INVESTIGATIVE STEPS

Checks of Booking Arrest Disposition (BADS) and Office of Court Administration (OCA) databases

Police may make arrests during special events; the individuals arrested could prove to be the alleged victims of misconduct complaints or witnesses to complaints. The arresting officer(s) could be the subject of or a witness to a complaint, or might be able to identify relevant officers. In order to compile all relevant information regarding such arrests, it is important to conduct database checks before arrests are sealed.

Squad leaders should ensure, upon receipt of one or more special event complaints, that arrests from the precinct(s) in which the special event occurred are immediately printed and reviewed. Depending upon the likelihood that numerous complaints will ultimately be received, checks of BADS should be completed even before complaints are assigned to investigators. Arrest reports should be printed and the squad should then obtain, through the Office of Court Administration (OCA) database, the current status of relevant arrests in the court system. Squad leaders should also ensure that the assigned investigator(s) subsequently obtains relevant Criminal Court Complaints.

In cases involving numerous complaints and arrests, squad leaders should consider plotting the locations of arrests on a map so that they can compare arrest locations to the locations of complaints (to be plotted on a separate map). If there are too many arrests to plot them on a map, the squad should organize the arrest reports by geographic area. In this way, the squad can compare the locations out of which complaints arose against the locations of arrests to identify both officers and civilian witnesses.

Mapping the locations of incidents leading to complaints

When the number of complaints stemming from an event is large enough to merit such action, squad leaders should create a map of the geographic areas where incidents leading to complaints took place. When the bulk of complaints have been received, accounted for and mapped, squad leaders should utilize the map to divide up the complaints for assignment.

NYPD records requests

When numerous complaints must be assigned to multiple investigators, squad leaders should

immediately prepare document requests for records that pertain to the overall body of complaints. These records are discussed in this chapter. (Investigators assigned to discrete complaints should request and obtain records pertaining to these complaints, e.g., memo books.) Depending upon the number of complaints filed and the scale of the event, the Chief of Investigations may personally act as a liaison with IAB commanders to expedite receipt of records.

The goal of this approach is to avoid multiple investigators assigned to related cases requesting similar or identical documents unbeknownst to each other. Another benefit of this approach is that by the time cases are assigned and interviews have begun, some documents will have been requested/received.

Squad leaders should be in charge of organizing and interpreting documents as they are received, organizing the documents, informing assigned investigators that documents have arrived, and ensuring that follow-up requests are submitted for those requests that are not filled in a timely manner. That said, investigators should be proactive about keeping abreast of the information contained in the squad's collective resources relating to the specific special event.

Creation of event-related photographic database

If multiple investigators must be assigned to handle complaints filed in connection with a special event, squad leaders will be responsible for preparing requests for photographs of officers and civilians that may aid in the investigations. Otherwise, the individual investigator should be aware that he/she should obtain the photographs of the following:

- Arresting officers/supervisor who verified the arrests
 - Based upon the information obtained from initial BADS checks
- Officers named by complainants as reflected in CCRB complaint reports
- Individuals arrested in connection with the special event
 - Based upon the information obtained from initial BADS checks
 - Whether to request the photograph of an arrestee depends upon the relationship between the location of the arrest and the location(s) of CCRB complaints
- Officers detailed to police the event in the relevant geographic areas
 - The identity of these officers will not become available until post maps and detail rosters are obtained

Request relevant media coverage

Investigators must notify their supervisor of any need for documentation of media coverage of an event/incident. In addition to obtaining past coverage of the event, squad leaders should set up a LexisNexis news alert for key words associated with the event, which will track all coverage going forward.

Request footage from NYPD's Technical Assistance and Response Unit (TARU)

The police department's Technical Assistance and Response Unit (TARU) frequently records, for operational purposes, demonstrations and parades for which the department prepares in advance. A request should be sent to TARU for any existing footage of the event as soon as a squad or an investigator receives complaints stemming from that event. Should the department require that a request be more narrowly drawn, the CCRB can request all footage relating to specific incidents.

The NYPD does not keep TARU footage indefinitely. The exact length of time that the NYPD keeps the footage is not known, and may differ depending on whether or not the NYPD is aware of an incident having occurred. The length of time that videos are held is also dependent upon whether or not the specific camera is connected to the network. If the camera is not on the network, then the video footage can be lost in days. It is important that the investigator immediately search to determine if TARU cameras are stationed near the incident and for the investigator to request these right away. The investigator should **ALWAYS** order TARU footage that may have captured the incident, even if they believe that the request date is outside of the time frame that they believe TARU would hold the footage. For a complete list of fixed TARU cameras, see the investigative drive.

Unique Police Department Records

Aside from the records the CCRB typically requests from precincts that may have to be requested for complaints stemming from special events, such as command logs, roll calls, stop and frisk logs, DAT logs, and prisoner holding pen rosters, there are some records unique to special events. The bulk of these documents relate to the staffing plan the NYPD designed before the event itself. These records are essential to identify the officers posted at specific locations for the event. They will also provide the CCRB with the context for the event and the NYPD's policing strategy, the number of officers mobilized to police the event and their locations and assignments, and the eventual outcome of the event in terms of arrests effected and summonses issued. **All documents for special events should be marked as "expedite" and investigators should take care to ensure that these documents are received in a timely fashion.**

EVENT APPLICATIONS AND PERMITS

Permit applications for marches, demonstrations, street closures, and rallies are processed by the New York City Police Department, the Parks Department, and/or the Mayor's Community Assistance Office, depending on the size, nature, and location of the event, and whether sound amplification devices will be used. Regardless of what entity processes and approves the permit, a copy of it should be available through the police department, specifically the Patrol Borough (and possibly the precinct) in which the event will occur.

Applications for permits and permits themselves can provide useful information to the CCRB, including the name of the individual who applied for the permit, his or her affiliation, the number of participants expected, conditions applicable to the event, the time, date, and location(s) of the event,

and if the event is a march/parade, the march/parade's planned route.

Here is an example of an application for a parade permit:

APPLICATION FOR PARADE PERMIT
PD 637-041 (REV. 3-02)

O.C.D.P.P. No. _____
DATE OF APPLICATION _____

TYPE OR PRINT LEGIBLY

APPLICANT'S NAME	RESIDENCE ADDRESS	PHONE NO.
STATE NAME AND ADDRESS OF CORPORATION, ORGANIZATION OR ASSOCIATION THAT APPLICATION IS MADE ON BEHALF OF		RELATIONSHIP OF APPLICANT TO CORPORATION, ORGANIZATION OR ASSOCIATION
CHARACTER OF ORGANIZATION (SOCIAL, POLITICAL, ETC.)	INCORPORATED ☐ YES ☐ NO	WHERE?
DATE OF INCORPORATION	TOTAL MEMBERSHIP	TOTAL PARTICIPANTS IN EVENT
HAS ORGANIZATION FILED WITH THE SECRETARY OF STATE A SWORN COPY OF ITS CONSTITUTION AND OTHER DOCUMENTS REQUIRED BY SEC. 63, CIVIL RIGHTS LAW. ☐ YES ☐ NO		IF YES DATE
AS A REPRESENTATIVE OF THE ABOVE-MENTIONED CORPORATION, ORGANIZATION OR ASSOCIATION, I STATE THAT THE SOURCE OF MY AUTHORITY TO SIGN THIS APPLICATION IS AS FOLLOWS:		
DATE:	BOROUGH:	EXACT LOCATION OF FORMATION AREA
DAY OF WEEK:		APPROXIMATE FORMATION TIME
PARADE START TIME		
DESCRIBE PARADE ROUTE: (include The Width Of All Roadways To Be Occupied By Parade)		
EXACT LOCATION OF DISMISSAL AREA		
APPROXIMATE DISMISSAL TIME		
LOCATION OF REVIEWING STAND, IF ANY		
DESCRIPTION OF VEHICLES AND/OR ANIMALS TO BE INCLUDED IN THE PARADE		
DESCRIPTION OF UNIFORM OR EQUIPMENT TO BE USED BY PARADEERS		
WILL RIFLES OR SHOTGUNS BE CARRIED ☐ YES ☐ NO	IF YES, INDICATE QUANTITY AND TYPE:	
WILL RIFLES OR SHOTGUNS BE FIRED FOR CEREMONIAL PURPOSES ☐ YES ☐ NO	IF YES, INDICATE LOCATION AND PURPOSE:	
PURPOSE OF PARADE		
NAME OF GRAND MARSHAL OR CHIEF OFFICER OF PARADE OR RACE	ADDRESS	PHONE NO.
MEETINGS, IF ANY, TO BE HELD IN CONNECTION WITH PARADE OR RACE, EITHER BEFORE OR AFTER		
CITY OF NEW YORK		
COUNTY OF _____		
DEPONES AND SAYS THAT ALL OF THE ANSWERS TO THE FOREGOING QUESTIONS ARE TRUE		
BEING DULY SWORN,		
SIGNATURE OF APPLICANT		
SWORN TO BEFORE ME THIS _____ DAY OF _____, 20____		
(NOTARY PUBLIC OR COMMISSIONER OF DAEMAS)		
INSTRUCTIONS. PREPARE _____ COPIES. ANSWER ALL QUESTIONS AND SIGN ALL COPIES. NOTARIZE ORIGINAL COPY ONLY.		
ON REVERSE SIDE OF THIS APPLICATION:		
1. List Titles, Names and Addresses of National, State and Local Officers of Sponsoring Organization.		2. List Names and Addresses of All Officers Who Will Participate in This Procession, Parade or Race.
NOTES:		
Each Organization or Society Desiring to Participate in a Parade Must Obtain a Permit From The Police Commissioner.		The Chief Officer of Any Procession, Parade or Race For Which a Permit May be Granted by The Police Commissioner, Shall be Responsible for the Strict Observance of All Rules and Regulations of Said Permit.
No Parades are Permitted on Sunday Before 2:00 P.M., Except as Specified in SECTION 14 OF THE GENERAL BUSINESS LAW.		

The NYPD's Office of the Chief of Department processes all requests for march/parade permits as well as all permits for sound amplification devices, whether the sound amplification device is to be used inside a park or at another type of event. If the event involving 20 or more people is to take place in a city park, an application must be submitted to the New York City Parks Department. The application can be viewed on-line on the parks department website; it contains similar information as is found on the application above.

Applications for street activity permits, typically block parties and street fairs, are processed by the Mayor's Community Assistance Office.

Here is an example of a parade permit:

PERMIT NUMBER		CITY OF NEW YORK POLICE DEPARTMENT		DATE ISSUED
THE FOLLOWING NAMED APPLICANT HAS BEEN GRANTED PERMISSION TO CONDUCT A PARADE AS STIPULATED BELOW				
APPLICANT'S NAME		ADDRESS		
POSITION OR TITLE		NAME AND ADDRESS OF ORGANIZATION OR SOCIETY		
TIME AND DATE OF FORMATION		PLACE OF FORMATION	NO. OF PARTICIPANTS	
NO. OF RIFLES/SHOTGUNS AUTHORIZED TO CARRY		AUTHORIZED LOCATION FOR CEREMONIAL FIRING OF RIFLES/SHOTGUNS		
STEP OFF TIME		PARADE ROUTE		
APPROVING OFFICER				
NOTE: All laws, ordinances and police regulations relating to processions and parades must be complied with and in particular: 1. No staves are to be carried and no money is to be collected during the parade. 2. No sounds are to be directed along the parade route unless proper authority has been obtained. 3. Music, to not permitted in parades on Sunday except as provided for by statute. 4. Rifles and shotguns carried to and from the parade must be unloaded and enclosed or contained in a non-transparent carrying case (N.Y.C. Admin. Code Sec. 220-5.9) 5. Rifles or shotguns shall only be carried unloaded during the parade. 6. If a rifle firing ceremony is to be conducted: a. Loading of rifles will be permitted only immediately prior to the firing ceremony. b. Rifles shall be discharged only during the rifle firing ceremony. c. Only blank cartridges shall be used.				
PARADE PERMIT		PS 537.051 (Rev. 7-81)		

DETAIL MEMORANDA

Typically prepared by the relevant patrol borough commander, these extensive memoranda detail the geographic areas--zones and sectors--to be policed for a march, demonstration, or other special event. The memoranda describe the geographic location of these zones and sectors, the police commanders and supervisors assigned to these areas, the number and rank of officers assigned to the areas, and the time the officers are to report. The areas to be policed can include areas far from the march route and demonstration area (e.g., transportation hubs). The memoranda also include tactical instructions. In investigating numerous complaints stemming from a special event, from the applicable patrol borough squad leaders should request all memoranda involving uniformed, mobile, and plainclothes details for a specific event. Two pages from a detail memorandum for the [REDACTED] anti-war demonstration illustrate what information can be found in these memoranda:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

ZONE, SECTOR, AND POST MAPS

Although the records the NYPD uses to prepare for large-scale events are not necessarily consistent from one event to the other, they do adhere to one general formula: areas to be policed are broken down into zones, sectors, and posts (in diminishing size order).

The map below depicts the sectors [REDACTED] for the [REDACTED] anti-war demonstration. Sectors, as described in the detail memoranda for the event, [REDACTED]
[REDACTED] Within each sector are posts [REDACTED] [REDACTED] All of the posts in one intersection or in one immediate geographic area make up a sector [REDACTED]
[REDACTED] The posts within one sector, in this example, were numbered to correspond with the sector number. [REDACTED]
[REDACTED] While not clearly depicted in this post map, a number of combined sectors comprise a zone. [REDACTED]
[REDACTED]

When requesting documents, the investigator or supervisor ought to cover all potential bases, keeping in mind that the types of maps created for any particular event may differ from others. Therefore, the squad leaders or investigator should request all zone, sector, and post maps from the applicable patrol borough. The post maps, however, will not be helpful unless the agency also obtains the applicable detail rosters, discussed in the next section.

Investigators should also be aware that the department usually has [REDACTED]
[REDACTED] which are assigned to specific geographic areas; these units remain ready to respond as necessary to supplement already detailed officers. Mobile response unit zone/sector maps should also be included, therefore, in all document requests.

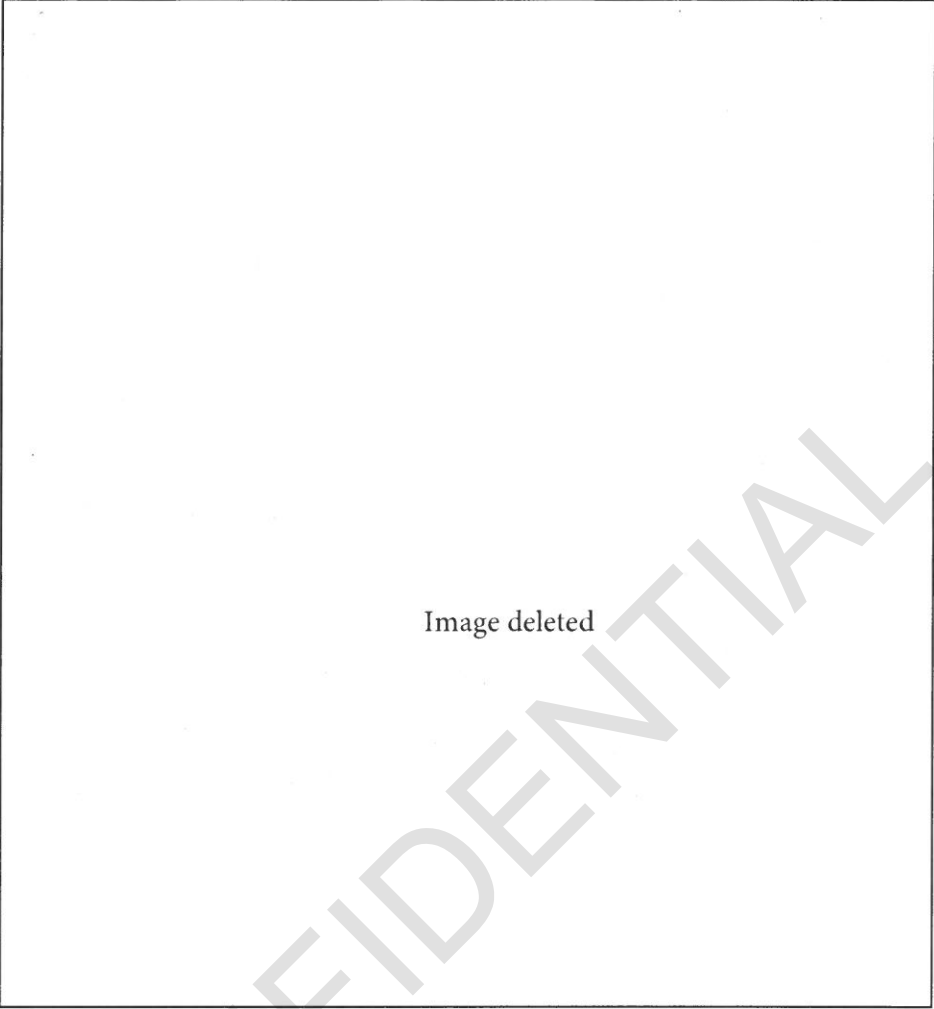


Image deleted

DETAIL ROSTERS

The detail roster is essentially a roll call for each post, and thus perhaps the most important document for identifying officers. Once the investigator has identified the location of the incident, and perused the post maps to identify which post(s) covered the location in question, the investigator should attempt to identify the officer(s) by reviewing the detail roster. This document, as depicted below, lists the [REDACTED] assigned to one post.

Image deleted

CONFIDENTIAL

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] In many cases, the detail roster will also note the command to which arrestees are taken. [REDACTED]
[REDACTED]

POST-EVENT MEMORANDA

In the case of parades, demonstrations, and protests, the assigned squad leaders or investigator should request post-event memoranda from the applicable patrol borough, and precinct(s). These memoranda, which the department might consider an unusual occurrence report (UF 49), describe the event and may detail the number of arrests and summonses issued.

IAB INVESTIGATIONS

It is not uncommon for IAB to be pursuing a concurrent investigation of incidents arising from a special event. The investigator should contact the IAB-CCRB Liaison and determine which IAB Group is handling the concurrent investigation. The investigator should regularly touch base with the IAB officer assigned to the case and the investigator should prepare a "Chief of IAB Letter" requesting the IAB case file documents. If IAB possesses video of the incident that the CCRB does not possess, every effort ought to be made to obtain this video footage in a timely fashion.

OTHER UNITS TO WHICH RECORDS REQUESTS SHOULD BE SUBMITTED

Depending on what occurred during the event, i.e., whether the mounted unit was deployed, requests for detail memoranda, detail rosters, roll calls, and unusual occurrence reports should also be submitted to the following commands:

- **Disorder Control Unit**
- **Applicable patrol borough task force**
- **Mounted unit**
- **Traffic Control Division and/or Manhattan Traffic Task Force**

VIDEO EVIDENCE

As with all incidents, obtaining video evidence is key to conducting a thorough investigation. With special events, videos taken by civilians on mobile digital devices often are posted on video sharing websites such as World Star Hip Hop and YouTube. Facebook and Twitter are also valuable resources to find video evidence. Subpoenas should also be generated to obtain video from the surrounding businesses and field work should be conducted (see Chapter Two for additional details).

NYPD TACTICS AND LEVELS OF MOBILIZATION

LEVELS OF MOBILIZATION

Mobilization is a response to a crisis or emergency that requires a larger presence to deal with an on-going issue that if not corrected can lead to some catastrophe or an even larger crisis. The NYPD has a series of "levels of mobilization" to handle these situations:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

TACTICS USED BY THE NYPD

In addition to the tactics used by the NYPD in typical circumstances, officers also have additional gear and tactics to handle large events and protests.

- Orange Netting is used as a barrier and crowd control device.
- Long Range Acoustic Devices (LRAD) or sound cannons. These devices are used to send audio messages at long range and have been used by the NYPD as a non-lethal, non-kinetic form of crowd control.
- Mounted Unit (horses)
- Plastic handcuffs
- Riot gear such as ballistic shields

REFERENCE MATERIAL FOR ANALYSIS OF COMPLAINTS

Most allegations raised by complaints stemming from special events raise the same type of issues as in other cases. However, there is reference material specific to such events that investigators should examine. In particular, the investigator should review the Police Academy curriculum chapter entitled "Maintaining Public Order" that is located on the Investigations Division computer drive. Relevant subsections include those entitled "Media at the Scene of a Demonstration" and "Demonstrations." In addition, the investigator should review Patrol Guide series 213 and its relevant procedures concerning mobilizations and special events.

Chapter Nine: Drafting Closing Reports

INTRODUCTION

“Closing report” is a term colloquially used to denote the Board Recommendation Report (“BRR”). The purpose of the closing report is to distill the essential facts, rules, analysis, and recommended dispositions of every allegation in the complaint. The purpose of this section is to solely describe the construction of a closing report. For information on the following topics, see the corresponding chapters: dispositions, Chapter One; pleading language, Chapter Six; analyzing search and seizure allegations, Chapter Five; case file organization, Chapter Eight; and analyzing force allegations, Chapter Ten.

COVER SHEET

The CTS automatically generates a cover sheet for closing reports from information that has been input into the 245. Only the pleading language and the order of the allegations can be changed on the closing report cover sheet itself. Allegations should always be ordered chronologically according to the complainant/victim’s narrative. The category of allegation (e.g. Abuse—Stop, Force—Physical Force) and against whom the allegation is pleaded can only be changed on the 245. Additionally, the time and date of the incident, the location of the incident, the officer’s name, rank, and command, and the complainant, victim, and witness names and contact information can only be changed on the 245. Thus it is important to ensure that all of the information in the 245 is accurate prior to generating the closing report.

Occasionally, an officer’s rank or command may change from the date of incident until the generation of the closing report. The 245 should read the officers rank and command at the time of incident. The purpose of the cover sheet is to clearly communicate pertinent information about the case. Thus, if contact information is not known for a civilian, the address field should be filled out with “Unknown” to preempt confusion. All of the details on the cover sheet should be consistent with the information within the closing report. Any change to the cover sheet or the 245 after either of these documents has been printed will require that the investigator reprint both the cover sheet and the 245.

ORDER OF ALLEGATIONS

In the CTS, the investigator can organize the order of the allegations within the closing report screen by clicking on the allegation and then selecting the up or down arrow in the lower right-hand corner of the screen. Allegations should be pleaded to reflect the chronological narrative. Victims should be listed singularly in separate allegations(see multiple victims section below)..

Example

Abuse of Authority: Police Officer Laura Palmer stopped Benjamin Horne.

Abuse of Authority: Police Officer Shelly Johnson stopped Benjamin Horne.

Abuse of Authority: Police Officer Laura Palmer stopped Pete Martell.

Abuse of Authority: Police Officer Shelly Johnson stopped Pete Martell.

Abuse of Authority: Police Officer Shelly Johnson frisked Benjamin Horne.

Abuse of Authority: Police Officer Laura Palmer frisked Pete Martell.

Discourtesy: Police Officer Laura Palmer spoke discourteously towards Pete Martell.

Force: Police Officer Laura Palmer struck Pete Martell with a gun.

NOT

Abuse of Authority: Police Officer Laura Palmer stopped Benjamin Horne and Pete Martell.

Abuse of Authority: Police Officer Shelly Johnson stopped Benjamin Horne and Pete Martell.

DESCRIBING THE FADO CATEGORY OF THE ALLEGATION

As illustrated above, the FADO category is to be pleaded first, followed by a colon and the factual portion of the allegation. [REDACTED]

[REDACTED]

DESCRIBING THE RANK OF THE SUBJECT OFFICERS

In the allegation column, the case tracking system will automatically generate, after the FADO category is listed, the name, but not the rank, of the subject officer. The investigator must describe the rank of the subject officer within the pleading language. That rank, which must precede the name of the subject officer, should reflect the rank at the time of the incident. When drafting allegations, write out the full rank of the member of service, e.g. Police Officer, Sergeant, Lieutenant, Captain, or Detective. Abbreviations can be used in the body of the report.

THE NAMES OF THE SUBJECT OFFICERS AND VICTIMS

The investigator must include the subject officer's first and last name, as illustrated above. However, for an officer who was working as an undercover officer at the time of the incident, the subject should be referred to as "Undercover officer shield 1234."

For victims of each allegation, the investigator must include the first and last name; the investigator should not title any victim as Mr., Mrs., or Ms.

Example

Undercover officer shield 1234 used physical force against Leo Johnson.

OR

Police Officer Pete Martell fired his gun at Hank Jennings.

NOT

Pete Martell fired his gun at Mr. Hank Jennings.

KEEPING ALLEGATIONS SEPARATE

It is important that **ALL** allegations be reflected in the CTS. There are instances where an action of an officer will contain two types of allegations at the same time. For instance, if it is alleged that an officer said, "I'll break your fucking face open," there would be two allegations: one of a threat of force and one of a discourtesy. In any instance where an officer's single action or statement contains two different allegations, **BOTH** allegations should be pled against the officer. This includes situations where an officer uses discourteous language in the same statement the officer uses offensive language. For example, if an officer says, "Shut up, you stupid fucking bitch," both a discourtesy and an offensive language allegation should be pleaded.

Example

Abuse of Authority: Lieutenant Thomas Hobbes threatened John Milton with the use of force.

Discourtesy: Lieutenant Thomas Hobbes spoke discourteously to John Milton.

MULTIPLE INCIDENT DATES

When a complainant/victim makes a complaint against the same officer(s) regarding incidents that occurred on separate dates, the allegations stemming from this complaint typically should be considered in a single investigative file under a single complaint number. However, on occasion there may be reason to keep the incidents separate. Investigators should consult with a supervisor before separating any complaint. Some things to consider when separating a complaint are the length of time between the two incident dates, the nature of the complaints, and the number of civilians and officers. Any officers identified as subjects in addition to the officer(s) common to all dates of occurrence should also be included in the single complaint.

While these complaints, spanning different dates of occurrence, should be given a single case number and treated as a single case, [REDACTED]

[REDACTED] In addition to inputting the first of the dates of occurrence into the CTS, the investigator will also have to delineate the incident date in each pleaded allegation.

Example

Force: On July 4, 2017, Police Officer Pete Martell fired his gun at Hank Jennings.

Abuse of Authority: On July 5, 2017, Police Officer Pete Martell threatened Hank Jennings with the use of force.

Discourtesy: On July 5, 2017, Sergeant Josie Packard spoke discourteously to Hank Jennings.

MULTIPLE LOCATIONS OF ALLEGED MISCONDUCT

If all the allegations occurred at the same location, there is no need to specify the location of occurrence within the allegation.

Where there are multiple incident dates, there are often multiple locations of occurrence. The CTS can accommodate only one location of incident in the “address” field; however, the CTS can accommodate multiple locations of incident in the “location description” field. In cases in which the multiple locations of alleged misconduct stem from multiple incident dates, the location must match the incident date and the investigator should input the address of the first incident date into the “address” field in the CTS. However, in the “location description” field, the investigator should include *all* alleged locations of incident. The allegation pleading language must also specify the distinct locations of occurrence.

In the more common situation where multiple locations of alleged misconduct stem from an ongoing interaction, the primary location should be inputted into the CTS (complaint information—complaint screen). For example, if the complainant/victim alleges he was the victim of excessive force on the street and then subject to various discourtesies at the precinct stationhouse, the investigator should input the street location rather than the precinct stationhouse address into the “address” field in the CTS; however, the investigator should include *both* locations in the “location description” field in the CTS. Remember that the term “precinct” refers to a geographical area which is not synonymous with a precinct’s stationhouse (e.g. 47th Precinct stationhouse).

The CTS cannot generate within the pleading language a location of incident. As a result, should there be multiple locations of alleged misconduct, the investigator must specify the location within the pleading language for each allegation.

Example

Force: In front of 211 West 138th Street in Manhattan, Police Officer Pete Martell fired his gun at Hank Jennings.

Force: At the 30th Precinct stationhouse, Police Officer Pete Martell used physical force against Hank Jennings.

If the investigator must specify both date and location, the date should precede the location of the alleged misconduct.

Example

Force: On July 4, 1999, in front of 211 West 138th Street in Manhattan, Police Officer Pete Martell fired his gun at Hank Jennings.

MULTIPLE SUBJECT OFFICERS

If it is appropriate to plead the same allegation against multiple subject officers, there must be a separate allegation for each subject officer. Pleading an allegation against a single subject officer rather than two or more only allows the board to reach a single finding for both officers.

Example

Abuse of Authority: Lieutenant Andy Brennan frisked Maddy Ferguson.

Abuse of Authority: Detective Douglas Jones frisked Maddy Ferguson.

MULTIPLE VICTIMS

For each victim of the same alleged misconduct, the investigator should generally plead separate allegations for each victim. Pleading an allegation with a single victim rather than two or more allows the board to find that only one victim was subject to misconduct.

Example

Offensive Language: Detective Dale Cooper made remarks to Josie Packard based upon race.

Offensive Language: Detective Dale Cooper made remarks to Norma Jennings based upon race.

There may be situations, however, where it is appropriate to plead an allegation with multiple victims. This practice of including multiple victims in one allegation is seen more frequently with allegations involving: stops, vehicle stop, vehicle search, pepper spray, and/or the entry and/or search of premises.

UNIDENTIFIED SUBJECT OFFICERS

To refer to an officer or officers, the investigator should use the terms officer or officers. The term MOS or member of the service should never appear in any allegation (or interview report or closing report). Within the language of the allegation, the investigator should not use the adjective unidentified. The recommendation, which will be "Officer(s) Unidentified," will suffice in explaining that the subject(s) is/are unidentified. If the command of the subject officer is known, even if the subject officer is unidentified, the command should be included on the 245 under the subject officers tab.

To generate the appropriate pleading language, within the complaint information-officer(s) screen the investigator should insert in the box for the officer's last name, "An officer" or "Officers." The investigator will also have to ensure that these terms are not improperly capitalized in the middle of a sentence.

Example

Discourtesy: An officer spoke discourteously to Nadine Hurley.

OR

Force: Inside the 47th Precinct stationhouse, officers used physical force against Nadine Hurley.

NOT

Discourtesy: An **unidentified** officer spoke discourteously to Nadine Hurley.

NOT

Discourtesy: An **O**fficer spoke discourteously to Nadine Hurley.

NOT

Force: Inside the 47th Precinct stationhouse, **O**fficers used physical force against Nadine Hurley.

UNIDENTIFIED VICTIMS

_____ the investigator should enter the term “An individual” or “Individuals” in the last-name field (leaving the first-name field blank) when the identity of the complainant/victim is not known. However, if a partial name is known, the investigator should enter the known name in the appropriate field and enter the term “unknown” in the other field. The investigator must make sure to then manually amend the pleading language of each allegation pleaded on behalf of any victim whose first or last name is not known.

To refer to an unidentified victim or victims in the *pleading language*, however, the investigator should use the terms “an individual” or “individuals.” Within the language of the allegation, the investigator should not use the adjective “unidentified” and should not use the term “victim.” Similarly, the investigator should not use partial names or nicknames, such as “an individual known as Fred,” or, “Mr. Unknown Smith,” or “an individual known only as Biggie.”

Example

Discourtesy: Police Officer Bobby Briggs spoke discourteously to an individual.

Force: Police Officer Bobby Briggs used physical force against individuals.

NOT

Discourtesy: Police Officer Bobby Briggs spoke discourteously to an unknown individual.

NOT

Force: Police Officer Bobby Briggs used physical force against an individual known only as Log Lady.

SELECTION OF THE SUBJECT OFFICER(S)

Once possible subject officers are identified, in most cases deciding against whom the allegation should be pleaded is an easy task: the officer(s) who allegedly spoke discourteously or the officer(s) who allegedly employed the actual force against the civilian. There are circumstances, however, where an officer who aided another officer in engaging in alleged misconduct should be charged as well. And in cases in which a supervisor directed the alleged misconduct, the supervisor might warrant being charged exclusively. Decisions regarding the selection of the subject officer(s) in such circumstances will be based on the facts of each individual case.

Search Warrants

In complaints where the entry/search of a premises is justified on the basis of a search warrant, the allegation should be pled against the investigating officer who obtained the warrant, unless the investigating officer was not present for the entry. In cases where the investigating officer was not present for the entry, the team leader (usually a sergeant or lieutenant) should be the subject of the allegation.

WITNESS OFFICERS

During the course of the investigation, officers will be identified who were present for the incident or were in some other way connected with the incident. Investigators should include as Witness Officers **all** non-subject officers who were present for any part of the incident **and/or** prepared any paperwork **and/or** had any influence over any documentation of the incident **and/or** were interviewed by the CCRB.

UNINVOLVED OFFICERS

The investigation will at times interview an officer that was believed to be involved in an incident, but who it is later determined was not involved nor was present for the incident. In such cases, the investigator must mark the officer as “uninvolved” in the CTS. This will remove the officer from the cover page when printed.

CLOSING REPORT EITQUETTE

In order to form consistency, professionalism, and ease of reading across closing reports, the following guidelines should be followed. As with any report writing, the closing report should be free of any contractions (e.g. couldn't, didn't). When introducing any individual, the investigator should use the full name of the individual and then thereafter use the individual's last name preceded by a title (e.g. Wilfred Quine—Mr. Quine; PO Elizabeth Anscombe—PO Anscombe; Dr. Candice Shelby—Dr. Shelby). If someone has the same last name and title as another person in the investigation, the investigator should use both the first and last name for the individual throughout the report. When introducing officers for the first time, the investigator should note the command to which the officer was assigned on the date of incident. Any change in rank, name, or title between the time of the incident and the writing of the closing report should be noted at the first introduction. In these instances, the officer's name and rank at the time of the incident should be used throughout the closing report.

Generally speaking abbreviations should be avoided. The exception to this rule is with titles (e.g. Doctor—Dr., Sergeant—Sgt., etc.) and when referencing a document so frequently that it becomes cumbersome to refer to the entire name of the document. In these instances, the first use of the abbreviation should include the full, spelled-out word that is abbreviated (e.g. Domestic Incident Report, or DIR). Note: within the allegation pleading language, abbreviations are not appropriate, and within the closing report.

REFERENCING CASE MATERIALS

[REDACTED]
[REDACTED]
[REDACTED] Any document that was not generated in the CTS and which is referenced in the closing report needs to be designated as a "Board Review" item. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

All police documents, regardless of whether these documents are referenced in the closing report or not, need to be designated "NYPD documents" [REDACTED]
[REDACTED]

[REDACTED] This will allow the reader to quickly reference the source material of a particular reference. The same is true for privileged medical documents, which should be referenced as "privileged documents" [REDACTED]
[REDACTED]
[REDACTED]

CLOSING REPORT TEMPLATE

The CTS automatically generates a template for closing reports. This template is subject to change with changes in policy and technology and can be found in the CTS when the "investigative report" function is selected. The following is an outline of the construction of a closing report, using the titles from the template as an organizational guide.

Case Summary

The purpose of the case summary is to introduce the complaint and every allegation in chronological order. The case summary orients the reader to what is being alleged (with the allegation number and category in parenthesis), against whom, and the disposition of the allegation. No further discussion of the facts or the analysis belongs in this section. The appendix of this chapter includes a template addressing the case summary.

Findings and Recommendations

In this section, the investigator will detail how officers were identified (if necessary), why certain allegations were not pleaded (if necessary), and the FRAC ("Facts, Rule, Analysis, and Conclusion") argument for every allegation and the recommended disposition of these allegations. A more robust description of this section will follow.

Mediation, Criminal, and Civil Histories

Dedicate a single sentence as to whether or not the case was suitable for mediation and if suitable, whether the complainant accepted or rejected mediation, and if accepted, why the case was not mediated. Civilians have 90 days from the date of incident to file a Notice of Claim with the City of New York. One sentence should be dedicated as to whether or not the victims filed a Notice of Claim with the City of New York or that that information is not known to the investigation and why (e.g. case was closed prior to 90 days, FOIL was sent to the Comptroller's Office and that office has not yet replied). If the victim did file a Notice of Claim, the investigator should detail what the victim was claiming and for how much the victim is suing.

For every complainant or victim (not witnesses) the investigator should list every conviction the complainant or victim has and the punishment imposed as a result of these convictions. Allot one sentence per victim.

In this section, the investigator should note anything from the civilian's history that may impact the victim's credibility (e.g. the victim denies ever having drugs, but has 5 convictions for the possession of narcotics). In cases where the complainant or victim has an extensive conviction history, the investigator should consult with a supervisor. The supervisor will assess to what extent the civilian's credibility is a factor in the case and determine the amount of history to include in the report. The appendix of this chapter includes a template addressing the mediation, criminal, and civil histories.

Civilian and Officer CCRB Histories

Only discuss complainants, victims, and subject officers (not witnesses) CCRB histories. Make note if this is the first complaint filed with the civilian as a complainant/victim or the officer as the subject. Investigators should also note any patterns within the CCRB history that relate to the allegations in the case (e.g. Sergeant [REDACTED] has had five force allegations pleaded against him and three of these were substantiated and two were unsubstantiated, or Mr. [REDACTED] has filed allegations of discourtesies five times, three of which were unfounded and two of which were unsubstantiated). The appendix of this chapter includes a template addressing the civilian and officer CCRB histories.

Allegations

The allegations should be lettered and organized in chronological order. However, any "Other Misconduct" recommendation(s) should be listed last. The allegations on the cover sheet should be stated exactly the same in this section. The alphabetical designation of the allegations should be consistent between the cover sheet, the case summary, and the allegations section.

Allegations that have the same fact pattern, analysis, and disposition can be grouped together for the purpose of this section, even if these allegations did not occur in contiguous sequential order. The alphabetic designation of the allegation should remain chronological. For example:

Allegation A—Abuse of Authority: PO Elizabeth Anscombe stopped Wilfred Quine.

Allegation C—Abuse of Authority: PO Elizabeth Anscombe frisked Wilfred Quine.

The next allegation to be discussed should be the next allegation in alphabetical order from the earliest allegation. So in the above example, Allegation B would be discussed next.

The "FRAC" method of writing organizes the discussion of the allegations in a standard and logical format.

Facts

These are the undisputed and disputed facts, as well as those facts that have been determined by the investigation, concerning the specific allegation. Start with the civilian statement, followed by witnesses, and then by the officer statement(s). The context prior to the allegation should be provided. This section also includes any material evidence. At times, the facts could be undisputed by all parties, in which case, testimonies can be combined. The facts sections should end with a paragraph regarding what the investigation determined, by a preponderance of the evidence, where applicable.

Rule

When applicable, investigators will cite the applicable rule governing the action, either from case law or the Patrol Guide. This is typically, but not always, used only in allegations which are substantiated or exonerated. Unfounded allegations typically involve a determination that the allegations did not occur. Unsubstantiated allegations usually show that the facts could not be decided.

Analysis

At this point in the report, the facts have been decided. This section should not reference any fact that was not discussed in the facts section. This section solely deals with the application of the relevant rules to the facts that were already decided in the facts section.

Conclusion

The conclusion is typically one sentence long. This sentence provides the final disposition based on the analysis. For example, "It is therefore recommended that **Allegations A and C** be **unsubstantiated**."

TRUNCATION REPORTS

Truncations do not follow the same template as the closing report, though they are both considered Board Recommendation Reports. Truncations typically have one section. The first sentence of a truncation report should make clear who filed the complaint, when, how, and where it was filed, and on whose behalf the complaint was filed. For example:

On October 18, 2015, Ms. Sylvia Plath called IAB to file the following complaint on behalf of herself and Mr. Ted Hughes.

If the complainant filed the complaint at somewhere other than the CCRB, the next sentence should detail when the complaint was received by the CCRB. The rest of the truncation report should show what was done to locate, identify, or schedule the complainants and the victims for in-person statements. The truncation standards, detailed in chapter one, should be shown for every complainant and victim. Keep in mind that the truncation standards are a minimum of what is required and that in certain cases (e.g. sensitive cases, serious injury cases), additional contact attempts may be necessary. This also includes any database or directory searches that were performed to find the complainant/victim(s). The final sentence, just like the final sentence in a full investigation, should conclude with the disposition(s).

APPENDIX
CLOSING REPORT TEMPLATES

Case Summary

- This is a streamlined sketch of the individuals involved in a complaint, allegations and findings. The case summary should only include the following information.
- Date and method of the complaint.
- Date, time and location of the incident.
- Subject officers' names.
- Alleged victims' names.
- The allegations, and a parenthetical with the allegation and disposition. [e.g. PO John Jacobs frisked Thomas Hobbes. (**Allegation A: Abuse of Authority, substantiated**)]
- Whether there is video evidence, with a board review of the entire video.
- Snag-it clips do NOT belong here. Snag-it clips should be placed in the analysis of the relevant section.

Findings and Recommendations

Allegation (A) Discourtesy: PO Ben Smith spoke discourteously to John Doe.

- Since the closing report no longer includes civilian and officer statements, you need to give context within the facts and/or analysis part of FRAC. For example, do not simply state: Mr. Doe alleged that PO Ben Smith told him he is a "motherfucker" and PO Smith denied it. Instead note the context, e.g., *It is undisputed that PO Smith approached Mr. Doe to issue him a summons for double parking. Mr. Doe argued with PO Smith, exited his vehicle and told PO Smith that he was simply trying to reach his quota for the month. PO Smith allegedly called him a "motherfucker."* PO Smith acknowledged that Mr. Doe argued about the summons and told him ____.
- This will continue to follow FRAC method as we do now.
- Civilian/witness/officer statements should be enclosed as they are introduced.
- Subject officer identification should be briefly addressed in a sentence.
- Only documentary evidence that is needed to support your allegations needs to be included within the analysis section including but not limited to the following: 911 calls, Event information, video footage discussion pertaining to the specific allegation, arrest photo, UF 250 reports, command log, medical records, field work etc.

Civilian and Officer CCRB Histories

- Brief summaries with enclosures noting any patterns that are important based on the civilian or officer history.
- Make sure to note if this is the civilian or officer's first complaint with the agency.
- Note the number of complaints for either civilian(s) or officer(s) and number of allegations overall through that time period.
- Briefly discuss substantiated allegations against MOS citing case number, board recommendation and NYPD disposition.

Mediation, Civil and Criminal Histories

- Summarize information in bullet pointed sentences with enclosures.
- If there was an attempt at mediation and the case was returned to investigations, the time frame should be noted here.

- Criminal conviction history should include the civilian's entire *criminal conviction* history. When citing the history, it should be brief and note that during a specific time period, the civilian was convicted for these specific charges with various sentences or if the same, note what they were. You do not need to cite each conviction separately.
- Note anything that may be important to allegation or credibility (such as denies ever having drugs but has been convicted 50 times for similar charges).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

TEMPLATE FOR CRIMINAL AND CCRB HISTORIES

OCA TEMPLATES

Template for when civilians have OCA Histories:

According to the Office of Court Administration (OCA), between [FIRST DATE CONVICTED] and [DATE OF REPORT], [CIVILIAN] was convicted of [CONVICTED CHARGE (AMOUNT)], [CONVICTED CHARGE (AMOUNT)], and [CONVICTED CHARGE (AMOUNT)] and [CIVILIAN] received varying amounts of [FINES, IMPRISONMENT, COMMUNITY SERVICE]. OCA does not list any other convictions.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Template for when civilians do NOT have OCA Histories:

According to the Office of Court Administration (OCA), [CIVILIAN] has no history of convictions in New York City.

[REDACTED]
[REDACTED] (OCA), Lev Bronstein has no history of convictions in New York City (Board Review 13)

CCRB HISTORY FOR CIVILIANS

Template for when first complaint by civilian:

This is the first CCRB complaint to which [CIVILIAN] has been a party.

[REDACTED]
[REDACTED]

Template for when civilian has multiple complaints:

- [CIVILIAN] has been party to [AMOUNT] of CCRB complaints and has been named as a victim in [AMOUNT] of allegations (Board Review ##):
 - [CASE NUMBER] involved allegations of [ALLEGATIONS] and was closed as mediated.
 - [CASE NUMBER] involved an allegation of [ALLEGATION], which was [DISPOSITION], and an allegation of [ALLEGATION], which was [DISPOSITION].
 - [CASE NUMBER] involved allegations of [ALLEGATIONS LISTED]. All the allegations were [DISPOSITION].
 - [CASE NUMBER] involved an allegation of [ALLEGATIONS]. To date, this investigation is still open.

[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

CCRB HISTORIES FOR MOS

Template for MOS with no CCRB history

- [OFFICER] has been a member-of-service for [YEARS] and this is the first CCRB complaint to which [PRONOUN] has been a subject.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Template for MOS with a CCRB history and no substantiations:

- [OFFICER] has been a member of service for [YEARS] and has been a subject in [AMOUNT] CCRB complaints and [AMOUNT] allegations, none of which were substantiated. [OFFICER'S] CCRB history does not reflect any apparent pattern pertinent to this investigation.
- [OFFICER] has been a member of service for [YEARS] and has been a subject in [AMOUNT] CCRB complaints and [AMOUNT] allegations. [QUANTITY MORE THAN TWO] [ALLEGATIONS] have been pleaded and [SUBSTANTIATED or UNSUBSTANTIATED] against [OFFICER]. Specifically, it was alleged [LIST THE CASES, THE PARTICULAR ALLEGATIONS, AND THE DISPOSITIONS]. In the current case, it was alleged [LIST THE SPECIFICS AND NOTE THE RELATION TO THE ABOVE PATTERN].¹

Ex.

- PO [REDACTED] has been a member-of-service for five years and has been a subject in eight CCRB complaints and 10 allegations, none of which were substantiated. PO [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.

Template for MOS with a CCRB history and substantiations:

- [OFFICER] has been a member of service for [YEARS] and has been a subject in [AMOUNT] CCRB complaints and [AMOUNT] allegations, of which [AMOUNT] were substantiated.:
 - [CASE NUMBER] involved substantiated allegations of [ALLEGATIONS LISTED] against [OFFICER]. The Board recommended [DISCIPLINE] and the NYPD imposed [DISCIPLINE].
 - [CASE NUMBER] involved substantiated allegations of [ALLEGATIONS LISTED] against [OFFICER]. The Board recommended [DISCIPLINE] and the NYPD has not yet imposed discipline.
 - [OFFICER'S] CCRB history does not reflect any patterns pertinent to this investigation.²

¹ If a case contains a pattern, the investigator and the investigative manager should discuss with DCI or DQAQI.

² See footnote "1" and the corresponding template notation.

[REDACTED]

MEDIATION

Template for complaint not suitable for mediation

- This complaint was not suitable for mediation.

Ex.

- *This complaint was not suitable for mediation.*

Template for complaint that was suitable, c/v declined

- [CIVILIAN] declined to mediate this complaint.

Ex.

- *Charlotte Corday declined to mediate this complaint.*

Template for complaint where mediation was accepted, but officers were unidentified

- [CIVILIAN] accepted mediation; however, the officers in the complaint were not identified, and thus the complaint was investigated.

Ex.

- *Nicolas de Condorcet accepted mediation; however, the officers in the complaint were not identified, and thus the complaint was investigated.*

Template for complaint that was returned to investigations

- On [DATE], this case was sent to mediation and on [DATE] the case was returned to investigation as the complaint was no longer suitable for mediation.

Ex.

- *On May 5, 2017, this case was sent to mediation and on December 30, 2017, the case was returned to investigation as the complaint was no longer suitable for mediation.*

CIVIL LAWSUIT

Template for no lawsuit filed

- As of [DATE], the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review ##).

Ex.

- *As of May 5, 2017, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to this complaint (Board Review 03).*

Template for lawsuit filed

- [CIVILIAN] filed a Notice of Claim with the City of New York claiming [CLAIMS IN LIST] and seeking [AMOUNT] as redress (Board Review ##). There is no 50H hearing scheduled.

OR

- [CIVILIAN] filed a Notice of Claim with the City of New York claiming [CLAIMS IN LIST] and seeking [AMOUNT] as redress (Board Review ##). A 50H hearing is scheduled for [DATE].

■
■ [REDACTED]
[REDACTED]
[REDACTED]

■
■ [REDACTED]
[REDACTED]
[REDACTED]

OR

- [CIVILIAN] filed a Notice of Claim with the City of New York claiming [CLAIMS IN LIST] and seeking [AMOUNT] as redress (Board Review ##). A 50H hearing was held on [DATE] and can be found at Board Review ##.

■
■ [REDACTED]
[REDACTED]
[REDACTED]

Chapter Ten: Medical Records

INTRODUCTION

Medical records are a sensitive and valuable tool for an investigation to corroborate or disconfirm signs of injuries in allegations of misconduct against members of the NYPD. Medical records can and should be obtained from both civilians and officers. The Health Information Portability and Accountability Act (“HIPAA”) protects medical records from being released without the signed consent of the individual who received medical treatment. This consent must be provided without coercion. At times, a witness or a police officer may be reluctant to provide this consent. In such instances, it should be explained to the civilian or police officer that medical records can help corroborate their claims of injuries or other medical issues described in the complaint.

Medical records alone cannot prove misconduct, but medical records can corroborate stated injuries or actions. Beyond showing a specific injury, medical records also provide “first statements” or statements made by civilians or officers at or near the time of the incident. Additionally, relevant injuries or medical conditions that existed prior to the civilian/police encounter can be described and change the recommended disposition of a case. Medical records can also identify officers, witnesses (including but not limited to EMTs), and civilian contact information. Psychiatric evaluations can also provide additional information as to the behavior/diagnoses of the civilian/officer.

OBTAINING MEDICAL RECORDS

Unlike Medical Treatment of Prisoner Reports, Line-of-Duty Injury Reports, or AIDED reports, which are all generated by the NYPD and are considered police documents, medical records require that the investigator obtain signed HIPAA request forms and usually a subpoena. **The investigator should always obtain several signed HIPAA request forms.**

All of the fields should be filled in and the signee (civilian/officer who obtained medical treatment) should initial the three boxes allowing HIV/AIDS information, alcohol/drug treatment information, and the mental health information to be released. Civilians and officers may be reluctant to release this information, especially when their complaint does not spring from HIV, mental health, or drug addiction issues; however, many hospitals will not take the time or care to excise this information from the records and will subsequently not comply with the entire request. If the individual, after this is explained, still refuses to initial these sections, still have them fill out the HIPAA and still attempt to subpoena the medical records, as some hospitals are more willing to comply without this information than others. In very rare circumstances, for instance in cases whereby the CCRB can argue the criminal exception, an officer’s medical records can be obtained by court order through one of the agency attorneys without a signed HIPAA request form. Investigators should confer with their squad leaders prior to making this request (see appendix for an example of this document). Even if documents are obtained in this way, they need to be placed in the blue folder of the physical case file and treated like any medical record (see below).

Subpoenas must also be issued to medical providers with a copy of the HIPAA form attached.

Please note that the investigation retains the original HIPAA release form, giving the hospital or medical provider a copy only. A draft of the subpoena can be found on the investigative drive with training materials. The subpoena should always request certified medical records for the individual in question.

Subpoenas should request that the records be returned within three weeks after the day that they are sent, on a business

day, and within business hours. As with all reports and documents generated during the course of an investigation, subpoenas should be free of spelling and grammar errors. The contact information for most hospitals in the New York City area can be found in the [REDACTED]. If the person receiving medical treatment is treated at a facility that is not listed [REDACTED] the investigator will have to call the facility and request the HIPAA processing unit, which is typically called the medical records division, but can go under different names.

Many times individuals are treated at more than one hospital over a long period of time. It is important that investigators request all known medical records from all facilities. This includes private physicians and the Department of Health and Mental Hygiene (DOHMH).

[REDACTED]
[REDACTED]
[REDACTED]

TYPES OF MEDICAL RECORDS

Pre-Hospital Care Report (PCR) and Ambulance Call Report (ACR)

To obtain either of these reports, subpoenas need to be sent to the FDNY and/or the hospital to which the person was taken. This document is typically the first assessment of the injuries/complaint of the person being taken to the hospital. This document does not typically contain diagnoses, but it will provide observed injuries/complaints and basic information as to the individuals' comments and appearance. This document can also provide the names of additional witnesses, specifically the medical personnel who arrived at the location. Please note that HIPAA request forms sent to FDNY need to be signed and stamped by a Commissioner of Deeds. The FDNY also requires that only one individual's records be requested on a single subpoena.

Pre-arraignment Screening Form

This document is filled out at Central Booking when arrested individuals are taken to court. Every person entering Central Booking speaks to medical personnel and medical issues or needs discovered in this process can result in the individual being taken to a hospital for treatment; the Department of Correction will not take any prisoner into custody who requires medical attention. Even in cases when a person is not taken to a hospital from Central Booking, this form is a valuable resource as to the state of mind and physical appearance of the arrested individual at the time that they are taken to Central Booking, as complaints and visible injuries are documented. To obtain this report, a HIPAA and subpoena should be sent to the FDNY (if the date of the request is within 90 days of the date that the person was at Central Booking) or Correctional Health Services (if the date of request is after 90 days of the date that the person was at Central Booking). Please note that HIPAA request forms sent to FDNY need to be signed and stamped by a Commissioner of Deeds. The FDNY also requires that only one individual's records be requested on a single subpoena. The pre-arraignment screening form must be requested on a separate subpoena from any other FDNY documents.

Rikers Intake Form

If a civilian is sent to Rikers, the Department of Correction performs a more comprehensive medical examination than the Pre-arraignment Screening Form. This document needs to be obtained from Rikers with a subpoena and HIPAA from DOHMH Correctional Health Services, the contact information of which can be found on the [REDACTED]

Hospital Records

As stated above, these documents need to be obtained through the medical records division of the hospital where the person was treated with a subpoena and HIPAA. These documents include a diagnosis and treatment that was rendered to the person. There is also a psycho-social report that is commonly included that can provide statements of the individual at the time of their admittance to the hospital. These documents can also provide additional witnesses names.

[REDACTED]

[REDACTED]

[REDACTED]

TYPES OF NYPD RECORDS

The NYPD documents listed below do not require a subpoena or a signed HIPAA as these documents are not certified medical documents.

In-House Requests

Aided reports are generated when the NYPD assists someone to obtain medical attention when they are NOT under arrest. This includes when officers are injured on duty. Aided reports can be obtained through an in-house IAB request.

Arrest photographs, which can be obtained by a DAO request, can show injuries to the face and upper body.

Threat, Resistance, or Injury Incident Worksheets (typically called TRI Reports) are generated whenever officers or civilians are injured as well as when force is applied to subdue an individual (even if no injuries occur). TRI Reports contain information as to what type of event initiated the interaction, actions taken by the officers, actions taken by civilians against the officers, MOS injuries, injuries to civilians, reasons that force was used, and recommendations from the officer's supervisor. In addition, a TRI Investigating Supervisor Assessment Report (ISAR), which will often include a narrative of the event, level of force applied, other officers present, and referrals to investigative bodies within the police department, may also be generated.

[REDACTED]

[REDACTED]

[REDACTED]

IAB Requests sent to the precinct of occurrence

When any person is under arrest, an arrest stamp is prepared in the *command log* of the precinct stationhouse where the individual was taken. This arrest stamp can include information regarding the arrested individual's mental and physical appearance and whether they were taken to the hospital. It can also note to what hospital the individual was taken, the shield numbers of the responding EMS personnel, the ACR number, and the EMS bus number.

The Medical Treatment of Prisoner Reports can be found at the precinct of occurrence, at the officer's command, and at the court section. Requests for this document should be sent to all three locations to ensure receipt.

The Firearm Discharge Report is generated anytime an officer fires his/her firearm. These reports will provide details about the incident, including if anyone was struck with a bullet, where, and injuries sustained. Generally when a Firearm Discharge Report is generated, an Unusual Occurrence Report (UF-49) is generated as well. This report should be requested from both the precinct of occurrence and the officer's command, and possibly the Patrol Borough, as it is typically filled out by the Commanding Officer.

IAB Requests sent to the Officer's command

Line of Duty Injury Report and Witness Statement are prepared when an officer is injured while performing their official duties. This document will include the nature of the injury and witness officers' statements regarding the injury.

The Intoxicated Driver Testing Unit (IDTU) Report is prepared when an individual is tested for alcohol and intoxication while driving. This document should be requested from the Highway Unit and the arresting officer's command.

Exposure Report is generated when an officer comes into contact with another individual's bodily fluids. This report should be requested from the officer's command.

OFFICE OF THE CHIEF MEDICAL EXAMINER

In certain cases, the Office of the Chief Medical Examiner ("OCME") can be a valuable resource. In cases where a civilian died in police custody, the OCME conducts the autopsy. The autopsy report can and should be obtained from the OCME with a formal request. This does not require a HIPAA, but it does require that the investigator send medical records (which do require a HIPAA to obtain) to OCME.

The OCME can also be used for expert medical opinion. While this is not often used, in cases where there is a question as to whether or not a civilian or officer could have obtained a particular injury from a particular action, a request can be sent to the OCME for an expert opinion. For contact information for the OCME, and additional details relating to obtaining these documents, please refer to the [REDACTED]

COMMON TYPES OF INJURIES AND MEDICAL ABBREVIATIONS

Injuries

Abrasion- a scrape or a scratch

Contusion- a bruise

Ecchymosis- nonelevated blue or purple patch.

Edema- swelling

Hematoma- dark swollen bruise; a protruding collection of blood within a tissue or space

Laceration- cut

Sprain/Strain- injury to muscle, tendon, and/or ligament

Fracture- broken bone

+/- - Positive/negative; yes/no

A&O- Alert and Oriented

ABD- Abdomen

AOB- Alcohol on Breath

ACS- Acute Cervical Sprain

AMA- Against Medical Advice

biba- brought in by ambulance

c- with

c/o- complains of

CT- CAT Scan

D/c- Discontinue

DOE- Date of Examination

DOI- Date of Injury

DOS- Date of Surgery

Dx- Diagnosis

EEG- Electroencephalogram (brain)

EKG- Electrocardiogram (heart)

ETOH- Alcohol

FROM- Full Range of Motion

F/u- Follow-up

Fx- Fracture

GSW- Gunshot Wound

HEENT- Head, Ears, Eyes, Nose, and Throat

H/i- Homicidal Ideation

H/o- History of

Hx- History

INK- Injury not Known

I & D- Incision and Draining

LOC- Loss of Consciousness

NAD- No Acute Distress

Medical Abbreviations

N/c- Not compliant

NKDA- No Known Drug Allergies

NKA- No Known Allergies

PE- Physical Examination

PEARL- Pupils Equal and Reactive to Light

PMD- Private Medical Doctor

PMHx- Patient's Medical History

RMA- Refused Medical Attention

RPR- Rapid Plasma Reagin (STD)

ROM- Range of Motion

S- Without

S/i- Suicidal Ideation

SOB- Shortness of Breath

STI- Soft Tissue Injury

Sx- Surgery

THC- Marijuana

TMJ- Temporomandibular Joint (jaw bone)

U/o- Under observation

W&D- Warm and Dry

WDWN- Well-Developed Well-Nourished

WNL- Within Normal Limits

V/A- Visual Acuity

i- One

ii- Two

iii- Three

iv- Four

BID- Twice daily

TID- Three times per day

QID- Four times per day

QOD- Every other day

QOH- Every other hour

Chapter Ten Appendix
Example of Court Order to Obtain an Officer's Medical
Records without a signed HIPAA

Image deleted

CONFIDENTIAL

Chapter Eleven: Identifying Officers

INTRODUCTION

Often civilians file complaints in which the identities of the officers involved are not immediately apparent. Civilians may not know the names, shield numbers, tax identification numbers, vehicle numbers, or even the command from which the involved officers are assigned. Many cases involve interactions which were not generated by a 911 call, where no arrests or summonses were issued, and where no Stop, Question, and Frisk Reports were prepared. Additional issues can arise even after the involved officers are identified as to which officer corresponds with which actions.

Cases involving large scale mobilization of officers or cases which are generated as a result of a special event are detailed in “Complaints Stemming from Special Events.”

INTAKE

Upon receiving a case, even a case with a scant narrative, steps can be taken to identify specific officers involved.

The CCRB’s [REDACTED] possesses a complete roster of members of service which is searchable by name, tax identification number, shield number, rank, gender, race, and command. [REDACTED]

[REDACTED] MOS roster is regularly updated, so the command assignment of any given officer reflects the assignment according to the most recent update, not necessarily at the time of the incident.

A search of the NYPD’s Booking Arraignments and Dispositions System (BADs) should also be consulted for the date of incident, even if the civilian does not acknowledge having been arrested as they may not be forthcoming about an arrest initially. It can also provide data as to which commands were actively making arrests in the area at the time of the incident.

CIVILIAN INTERVIEWS

Civilian interviews, when conducted properly, provide several clues to the identities of the officers involved in an incident. It is not uncommon for civilians to conflate the actions of a single officer or a set of officers into the vague term “they.” The investigator must disambiguate the “they” at every step of the interview. For instance, a civilian may say that “they said to shut the fuck up,” but without further disambiguating which officer specifically said this, and when, compromises the investigation’s ability to attribute the action to any single officer or officers.

In cases where the officers are named by the civilian, this task is greatly simplified as there is a shared signifier between the investigator and the interviewee and that signifier has one and only one referent, namely the officer. However, in cases where the officers are not named by the civilian, it is necessary that the investigator and the interviewee establish a signifier-referent system whereby any given action is attributed to a single officer. This is generally best established by referencing distinct or differentiating physical features of each officer. If these differentiating features are lacking, an arbitrary number system (PO1, PO2...) can also be established.

To obtain these features, and to obtain details that will assist in officer identification generally, it is imperative that the civilian describe the officer’s pedigree. As with all questioning, the investigator should start with a broad question such as, “Can you describe this officer?” While the answer to this

question will lack some the specifics that need to be gathered later, it will open the civilian up to providing details that the investigator did not know existed and did not even know to ask about, such as previous interactions with this officer or particularities of the officer's physical description. Typically the civilian will answer this question with the most striking feature of the officer that differentiates this officer from the others and which can then be used as the shared signifier such as "the tall officer" or "the blue-eyed officer." [REDACTED]

After obtaining the information from the broad question, the investigator should then ask about specifics that were missed in the initial description, including, but not limited to, the officer's gender, apparent race or ethnicity, approximate height and weight, estimated age, hair and eye color, and hair style. Additionally, the investigator should determine whether or not the officer had facial hair, wore glasses, had tattoos, had distinctive characteristics (e.g. a mole, a cleft chin), was dressed in uniform or plainclothes, or was wearing any distinctive article of clothing. The investigator should also determine if any of the officers addressed each other with nicknames, ranks, or proper names (e.g. "Lieutenant," "sarge," "Mike," "Johnson"). Investigators should obtain detailed information about the officer's uniform, such as shirt color/type, chevrons, lapel pins, stripes on forearm, type of boots, etc. which can also assist in identification. The civilian may not know the answers to these questions, but it is important that the investigator asks as the individual may not spontaneously think of providing this information themselves.

Beyond the physical characteristics of the officer, civilian interviews can provide additional clues as to the officers' identities. The investigator should determine the content of the conversation with the officers, especially the types of questions that an officer asked the individuals (e.g. asking about guns, narcotics, prostitution). The types of questions, while not definitive, can narrow the focus of the investigation. For instance, if an officer questions the individual primarily about the location of narcotics, along with other circumstances such as the officers being dressed in plainclothes can narrow the focus of the investigation to search commands that focus their enforcement on narcotics.

The investigator should also determine what the civilian was doing prior to the police interaction, with whom, and the physical descriptions and clothing items of all the civilians involved following the same procedure as when they are having civilians describe officers. Police encounters are rarely initiated at random, and the actions of the individuals involved can provide clues about what drew the officers' attention to these individuals. The investigation may later uncover Events with distinct descriptions of individuals in the area (see below in the section entitled Police Records) and other documents may uncover that the individuals all approached each other and exchanged cigarettes (or other small objects) that might catch the eye of a narcotics observation post.

The investigator should also ask if any of the officers ever obtained the civilian's identification, went over the radio, or wrote anything down. If the officer did write something down, the investigator should determine if the civilian saw on what the officer wrote. Officers may have checked for a warrant for the individual or generated a memo book entry, or Stop, Question, and Frisk Report, all of which can be obtained by IAB document requests (see below in the section entitled Police Records).

Vehicle stops constitute a special case for officer identification. Police vehicles have additional identifying information written on the outside of them that can assist in police officer identification.

It must be noted, however, that many commands do not keep accurate vehicle logs and that the numbers on the side of the vehicle or on the license plate can be unreliably reported by civilians. Beyond the identification numbers on any given vehicle, descriptions of the vehicle can also be used to identify commands and officers (see below in the section entitled Police Records). In addition to this, vehicles have reliable special indicators that can help to differentiate the officers from one another. Where the officer was seated in the police vehicle is often a deciding factor as to which officer performed which actions and thus should always be asked of the civilians and officers. Note that even though an officer was seated in the driver or passenger seat does not mean that the officer will necessarily approach the corresponding window of the civilian's vehicle, and thus the investigator must establish which side of the civilian's vehicle the officers approached.

A photograph of every civilian interviewed in person should be obtained. Officers interact with several people during any given shift and in any given incident, and the photographs of individuals involved can help the officer and the investigator to differentiate between different civilians.

Beyond the address or the intersection where the incident occurred, the investigator should obtain the type of location where the incident took place. Incidents that occur at a NYCHA facility are going to have a different set of officers likely involved than a transit hub or park.

In a limited number of cases there is a question as to whether or not the individuals involved were in fact NYPD officers. Cases where this typically arises are in courts, some transit hubs (e.g. Penn Station, Staten Island Ferry), parks, shopping centers, or during incidents that involve a federal or state task force. In these cases, careful attention needs to be paid to the details of the "officer's" clothing, role in the incident, questions, and where the individuals were taken. Finally, there have been cases in the past where the "officer" in question was in fact a civilian impersonating an officer or in some way misrepresenting themselves as an officer. These cases should be referred to IAB.

If the investigation has video or photographic evidence, this evidence should be shown to the civilian at the end of the interview. The civilian should be asked to identify all parties depicted, even if these parties' names are unknown to the civilian.

POLICE RECORDS

Event Unit Information and the Communications CD

If it is determined in an investigation that a 911 call was made or if it seems likely that the officers went over the radio to request additional units or a supervisor, an "Event" will be generated. The Event Information will have a plethora of facts, but there is another document, the "Event Unit Information," which needs to be ordered in addition to the Event Information, that distills from the Event Information the units that went over the radio to announce their presence at the location. This list is not exhaustive of all units present, as it is dependent upon the officers actually announcing their presence, which in the heat of an incident, they may forget to do. At the very least, this document will typically provide the unit that initially arrived and any supervisors that arrived.

Additionally, the Communications CD (which is the recorded audio of all of the radio communications that are found on the Event Information) can provide additional clues that are not found on the Event Information. At times, not all of the information communicated over the radio successfully makes it into the Event Information, but will be audible on the Communications CD. It is important to note that Communications CDs are not call specific, which is to say that the

Communications CDs record all of the communications that a 911 operator was engaged in for a specific time period. Thus, there will be audible other jobs and other communications that are happening concurrent to the incident that the CCRB is investigating.

OMNIX and Z-Finest

Whenever an officer searches for warrants in the computer system, they have to sign into the programs with their tax identification numbers. The searches are saved within the computer and can be searched with a request to IAB. The search of OMNIX and Z-Finest can reveal what information was searched, when, where, and by whom. This can be a fairly reliable source of determining which officer was present at the incident; however, officers often forget to log out of the computer system when handing off the police vehicle to the next shift and this at times can create false positives. Also officers may request a search be done over the radio to stationhouse personnel, in which case the tax identification number will be the stationhouse personnel and not the officer involved. The stationhouse officer can and should still be interviewed if other identification routes fail as that officer will likely know the identity of the officer who requested the warrant check.

Stop, Question, and Frisk Reports (UF250)

When generated, UF250s can be a useful tool to identify officers. There no longer exists a handwritten log of all UF250s generated. A computerized UF250 Log does exist, but this log will not have any of the civilian's names or identifying information listed.

Booking Arraignments and Dispositions System (BADS)

BADS lists the arrests and tracks arrest reports throughout the five boroughs. BADS is commonly used to find the Online Booking Sheet (or OLBS), and thus the identity of at least one officer involved with the arrested individual. This can be deceptive, as the arresting officer is not always at the scene of the arrest. However, even if the listed arresting officer was not at the location of the arrest, s/he should have knowledge of who was present and the circumstances of the arrest. BADS can also be used in cases where none of the complainants or victims were arrested as a result of the incident, because the log of all arrests will show which commands were actively making arrests in the area or precinct at the time of the incident.

Command Log

For incidents that occurred at the stationhouse, whether they involve an arrest or not, the command log provides valuable clues for identifying officers. While the roll call (see below) will note who was assigned to the desk, the desk assignment can change and there can be additional officers in the area that will not be reflected on the roll call. For instance, if the incident occurred at the same time as an arrest was being processed in front of the desk, the command log often includes an arrest stamp with the arrestee's name and the arresting officer's name, who would be potential witnesses to the incident.

Automated Roll Call System "ARCS" and Roll Calls

ARCS and roll calls are a roster of all officers working out of a given command. The ARCS is a non-finalized version of the roll call that often contains incorrect information, but can give early clues as to officers' assignments or to confirm a particular officer's partner. The roll call is the finalized roster of the day's assignments. The roll call will also list vehicle numbers that were assigned to particular officers, which is typically handwritten next to their names. While the vehicle numbers can be inaccurate, the vehicle numbers will show groupings of officers in a team that may

not be readily apparent on the roll call itself (for instance anti-crime or conditions). Specialized commands and detective squads also have roll calls, but these are highly inaccurate because of the fluid nature of the assignment. Tactical plans and movement logs (see below) are better and more accurate indicators of who was working in these commands.

Daily Vehicle Assignment Sheet

Uniformed commands, such as precincts and PSAs, have a Daily Vehicle Assignment Sheet, which logs each vehicle assigned to the command and who is utilizing that vehicle on each tour, or if the vehicle is simply not in use. The Daily Vehicle Assignment Sheet should be used as an indicator of who was assigned which vehicle, but should not be considered definitive. Commands differ in regards to the degree of accuracy of this document and contingencies may arise that render a vehicle unusable after assignment.

Unmarked Vehicle Utilization Log

Each unmarked vehicle should have its own log book, where officers sign in and out when they are utilizing the vehicle. Investigators need to have a plate number and vehicle description to order this document as there is a separate log for each vehicle.

Tactical Plans, Search Warrant Plan Pre-Execution, and Post-Execution

Tactical plans, typically utilized by specialized commands such as Narcotics, Vice and Gang, is a breakdown of the enforcement plan of the day. These plans list specific officers' assignments on the team and with whom they are partnered. These commands typically work as a team, executing pre-planned activities such as "Buy and Bust" and observation posts. The tactical plan will state where the officers plan to enforce and what officers will be assigned which role (such as arresting officer, chase car, prisoner van, etc.).

Search warrant plan pre-execution (colloquially shortened to pre-execution plan) is similar insofar as it is a plan for enforcement that lists specific roles. However, as the name suggests, this document is used to pre-plan a search warrant. Generally the pre-execution plan lists the following roles: overall supervisor, entry supervisor, bunker, bunker security, cuff-and-toss, hospital auto, and the arresting officer. Thus, if during the execution of a search warrant, a civilian makes an allegation against an officer, determining what the officer was doing during the warrant will go a long way in determining their identity when the pre-execution plan is obtained. The post-execution plan explains what happened and what was recovered.

Domestic Incident Report

Domestic incident reports ("DIR") are generated when officers respond to domestic disputes. These reports typically contain statements from victims and responding officers. The DIR will have a reporting officer's name and the name of a supervisor.

AIDED and Line of Duty Report

An AIDED report is prepared any time an officer assists an injured individual who is not arrested, which can include both civilians and officers. This report is always generated when an officer is injured, even if it is not designated a Line of Duty injury. The AIDED can provide the identities of officers that were present and injured and it will also list the tax identification number of the officer who filled it out. Much like arrest reports, AIDED reports can sometimes be prepared by officers who were not present. A Line of Duty report is prepared when an

officer's injuries are designated as such. This document will provide a brief statement of the officer who was injured, a statement from an officer who witnessed the injury, and a brief statement from a supervisor who may or may not have been present.

City Involved Accident Report (UF-18)

An accident report, city involved, is prepared when there is an incident involving property damage and/or personal injury in which the City may be a plaintiff or defendant. When a police vehicle is involved in such an accident, a Police Accident Report/Motor Vehicle Accident Report is filled out. Even if you don't know the command that the officers were assigned, this document can be useful in identifying officers as it is ordered from the precinct of occurrence.

Complaint Follow-Up Informational and Complaint Follow-Up (DD5)

DD5s are similar to the CCRB's IAs and are utilized by detective squads, warrant section, and sometimes specialized commands to document investigative steps taken during a criminal investigation. While the officer who produces the document may not have been present for the incident, that officer will have documented what steps were taken by whom for the investigation.

Emergency Services Unit Report

The Emergency Services Unit (ESU) creates a separate report for any incident where they are required, regardless of what documentation is created by other officers at the scene. The investigator does not need to know which ESU unit responded as the request should be sent to the main ESU office (command code 450) and they will determine the truck for the investigator.

Fleet Services

Fleet services can determine to which command a vehicle with a certain plate number belongs. They can do "fuzzy" searches for incomplete or slightly inaccurate plate numbers as well. For unique vehicles on patrol in a certain area, they may be able to determine which command utilized the vehicle.

Interrupted Patrol Log

This is a log book where officers who are returning to a precinct or PSA or Transit District during a tour will sign in and out to note that they have interrupted their patrol duties (e.g. meal, administrative). This documents also logs officers from different commands that enter the stationhouse. It should be ordered any time there is an incident at a stationhouse. Most of the time it will not have relevance, but on the occasions it does, no other document would have identified the officer.

Movement Log

Much like the interrupted patrol log, the movement log is a sign-in/sign-out sheet for specialized commands (such as Narcotics, Gang, Detective Squads, Vice, Warrants, etc.). Movement logs generally indicate when detectives leave the stationhouse for investigatory purposes. Frequently the movement log will note the vehicle that the detectives were using, the time they came in, and with whom they went into the field. Due to the fluid nature of the assignment, specialized commands' roll calls are often inaccurate and movement logs are the determining roster.

Prisoner Holding Pen Roster

The prisoner holding pen roster is a record of all arrested individuals who were detained in the cells at a command during a 24-hour period. It will also note the officer responsible for each prisoner and may note who the cell attendant is, which may not be noted in the roll call. This is crucial to order for any incident that happens in a holding cell. Order this from the precinct, PSA, or Transit District where the prisoner was held.

Property Voucher

A property clerk's invoice is prepared any time an officer recovers property and retains the property in police custody. This document lists the invoicing officer and the officer who recovered the evidence (known as the "finder").

Summonses

Summonses always carry an officer's tax identification number. Ordering a summons does not necessitate knowledge of the issuing officer's identity. Just like arrest reports, the summoning officer may or may not directly interact with the civilian who was summonsed, but they should have knowledge of which officer did interact with the civilian and what the circumstances were.

Telephone Switchboard Log

This is a log kept by the telephone switchboard operator at precincts, PSAs, and Transit Districts. Oftentimes the operator is seated near the desk sergeant and can be a witness to activity happening at the desk or where civilians enter the stationhouse, particularly where they file complaints. Sometimes the name of this officer is not in the roll call and is only in the log. The telephone switchboard log is not always accurate, thus the command log should also be ordered in the hopes that one of the documents was accurately filled out.

Transit System Ejection Report

Anytime an officer ejects an individual from the transit system, the officer is required to fill out an ejection report, which carries the officer's tax identification number.

Unusual Occurrence Report (UF-49)

A UF-49 is typically prepared by a duty captain when something out of the ordinary occurs, such as homicides, riots, shootings, off-duty incidents, high-profile crimes, an officer hitting a civilian with a vehicle, etc. The report includes a recap of what occurred, what witnesses were interviewed, which officers were involved, and what NYPD reports were prepared.

Warrant Investigation Report (or I-Card Investigation Report)

This report looks similar to a DD5 or the CCRB's IAs, and details all of the steps taken to locate the alleged perpetrator of a crime that caused a warrant or I-Card to be issued. This should be ordered from the command of the officer who is looking for the perpetrator, not the detective who decided the warrant or I-Card should be created.

OFFICER INTERVIEWS

Officer interviews are a valuable source of information for identifying other officers involved in an incident. Even if the officer-being-interviewed is not familiar with the identities of the other officers involved, they will likely possess a plenitude of information that is not readily available to civilians, such as command, rank, and role in the incident.

Just as in civilian interviews, when interviewing officers, the pedigree information of all parties involved in an incident should be obtained. This includes the pedigree information of the officers that arrived to the scene. This is especially important when an officer does not know the name of the other officers involved. [REDACTED]

[REDACTED] Even if the officer was not physically present at the location during part of the incident, the officer can have identifying information for the officers involved.

Often officers are reluctant to name additional officers present because they do not believe that the investigation already possesses this information based on the allegation sheet. [REDACTED]

[REDACTED] Additionally, showing photographs of the civilians involved, as noted above, is an effective means of refreshing officers' recollections as to the specifics of an interaction. Providing the officer with the descriptions of other officers provided by the civilian is also a useful technique to obtain identification, especially if the description provided by the civilian is detailed and possesses unique identifying characteristics.

If the investigation has video or photographic evidence, this evidence should be shown to the officer at the end of the interview. The officer should be asked to identify the officers depicted.

CONFIDENTIAL

Chapter Twelve: Force and Video Evidence

INTRODUCTION

Cases involving force allegations are among the most difficult cases that the CCRB investigates. Often when we observe the application of force, it is in the context of a criminal action. Police officers, as the law enforcement branch of the government, are authorized to use force to uphold the law. This application of physical force, however, is limited by the rules and laws of the NYPD, New York City, New York State, and the United States. The CCRB investigates allegations of force ranging from physically grabbing an individual to shooting and killing an individual. There are very few forms of force that, as a category, are *prima facie* misconduct.

The investigation of force allegations raises unique issues and concerns. Force allegations require the gathering of the facts and the application of a rule. The nature of force is such that the gathering of facts is filled with qualitative determinations, as well as determinations of degree and an analysis of the surrounding circumstances of the actions. These qualitative determinations, however, do not mean that factual statements cannot be made. Force allegations often involve an analysis of the *results and the surrounding circumstances* of the force applied.

On June 27, 2017, the NYPD updated the Patrol Guide to include more expansive guidance to officers' use of force. Of specific note is that the NYPD placed a greater emphasis on de-escalation techniques. The Patrol Guide defines de-escalation as actions to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources become available. Additionally, the Patrol Guide moved away from the "minimal amount of force necessary standard" to the "reasonableness standard." This new standard requires that investigators take into account the entirety of the circumstances to determine if another officer of similar training and experience would have taken the same action. Both guidelines are given a more robust treatment below, but these guidelines will form the backbone of the analysis of force and as such should be borne in mind throughout the investigation of a force allegation.

DOCUMENTING FORCE IN THE CTS

Beyond the transcriptions of interview statements and video (see below), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Documenting Force [REDACTED]

[REDACTED] The reported injuries and medical documentation of these injuries are tied to a specific victim. Any documentation of reported injuries and/or medical treatment associated with these injuries should be tied to the conduct of officers. That is to say, injuries reported as a result of an AIDED case or that were a result of a previous interaction generally should not be listed here. The injuries section [REDACTED] documents injuries sustained as a result of the interaction with the officers, and not the civilian's medical state at the time of the incident.

The section "Reported Injury" refers to what the civilian reports to the CCRB, not what the

investigation is crediting. Hence, whenever this section is utilized, regardless of whether medical treatment was sought or the injury was documented, there will be a selection for the injury type. The “yes/no” drop down box for medical treatment should be tracked whenever it becomes evident that the individual obtained medical treatment, regardless of whether this medical treatment corroborates the injury or not.

The field labeled “Description of Injury” should provide information as to where the injury was located on the body and the nature of the injury. This also refers to what the individual alleged and not what the investigation is crediting. The “Documented Injury” field should only be selected when certified medical records are received. In this way comparisons can be made between reported injuries and documented injuries, and the corroboration or contradiction can be easily highlighted (see Medical Records). If the civilian was seen by a medical provider and the medical provider does not note any injuries, the “Documented Injuries” field should remain blank, [REDACTED] the closing report should explain the contradiction. [REDACTED]

The allegations section, under the “Officer(s)” tab is discussed in several sections in this manual (see the chapter on “Drafting Allegations”) and thus will only be briefly touched upon here. As noted in the Drafting Allegations section, separate allegations should remain separate. This is particularly important and difficult in cases involving force allegations because of the different standards for different types of force and for the evolving circumstances of these situations. This does not mean, however, that if an officer punches an individual three times in quick succession that it is mandatory to separate every punch as a different allegation. There is no “bright line” rule regarding when an allegation covers the entirety of an act or when it is separated into differentiated allegations. Generally speaking, it is better to have a greater degree of singular allegations addressing a singular action, thus allowing for more nuances in the evaluation of the facts associated with these allegations.

Allegations of different types should ALWAYS be pleaded separately. The “physical force” allegation type is NOT a catch-all for any type of force, but instead refers to impact maneuvers and body-on-body struggles. Investigators should always attempt to be as accurate as possible when choosing a sub-allegation for allegations to which that applies. While allegations of a different type (e.g. Force: Struck with asp and Force: Physical Force) should always be pleaded as separated allegations, sub-allegations (e.g. Force: Physical Force—punched, kicked, kneed and Force: Physical Force—dragged, pulled) do not necessarily need to be pleaded as separate allegations. However, these sub-allegations are an indication that the actions could be pleaded separately. Generally, homogenous actions that occur within the same time frame, location, and circumstances can be held together under the same allegation. Investigators should discuss with their squad leaders in situations where they are uncertain if a series of actions should be pleaded separately.

The same applies to allegations of the use of a Conducted Electrical Weapon (CEW). Each cycle of a CEW does not does not necessitate its own allegation. However, investigators should speak with their squad leader whenever there is alleged more than one application of the CEW, especially in instances where non-homogenous actions take place (e.g. drive stunning following standard use) and in instances where there is a substantial delay between cycles, to determine the number of allegations to be pleaded.

As with all cases, it is important to maintain precise and clear locational descriptions. The environment and physical structures of the location often are active in the assessment and application of force. [REDACTED]

[REDACTED] Thus spatially orienting details (e.g. “in front of,” “inside of,” “en route to”) should be listed. Additionally, changes in location are especially important to track in force cases. One-half block, going from the inside to the outside or from one building to another can have important consequences to the case and be duly listed in the “Location Description” and within the allegations themselves (see the chapter on “Drafting Allegations”).

Detailed Investigative Actions

[REDACTED] investigators should be consistently and accurately recording documentary and video evidence in detailed [REDACTED]. These detailed [REDACTED]s should be made upon receipt of the evidence and should include the salient information found therein. Special care should be taken to determine and note the source of the evidence and, if a statement is made, who made the statement. Thus in medical records, diagnoses and treatment plans from medical professionals should be differentiated from statements made by officers or the complainant/victim. All of these statements can and should be used in the analysis of force, but different conclusions can be drawn from diagnostic information, and civilian statements about what occurred at the time that treatment was rendered. The same holds true for police documents. For more details regarding the different types of documentary evidence regarding the results of force, see the chapter on “Medical Records.”

Often force cases involve photographic evidence. All photographic evidence, whether digital or print, must to be included in the case file. When the investigator is taking the photo, or instructing a civilian to take a photo, especially of injuries, the photo should include a ruler, or other common object of uniform size, placed nearby the subject of the photo to show scale. The investigator should take special care to depict in the photograph the face of the person with the injury. If this is not possible in one photograph, the investigator should take a series of photographs depicting the injury, the injured body part, and the face of the individual connected with that body part.

All photographs, regardless of how obtained, should have noted on the bottom of the page what is depicted, from whom the photograph was obtained, when the photograph was obtained, who took the photograph, when the photograph was reported to have been taken, and the case number associated with the photograph. This information must be typed and should not appear on the image itself. Investigators should **NEVER** write or type over a photograph or in any way deface the photographic evidence.

As always, all [REDACTED] should have something written in the body of the [REDACTED] itself to indicate what is attached. Regardless of whether it is video evidence, a photograph, scanned documents, or detailed [REDACTED], clear, grammatically correct statements describing the contents of the [REDACTED] should be placed in the body of the [REDACTED] with a notation that there is more information in the detailed [REDACTED] or that something is attached.

OBTAINING CIVILIAN STATEMENTS REGARDING THE USE OF FORCE

When a civilian makes an allegation of force, the investigator is required to extract information that can be used during the course of the investigation to determine what happened (for instance, how much force the subject officer used), and whether that use of force was permissible (specifically, by determining how much resistance, if any, was being offered by the victim). While obtaining information from civilians is always challenging, obtaining usable information regarding allegations of force can present several additional challenges of which the investigator must be aware.

It is imperative that the investigator uses the civilian interview to collect detailed information about the subject officer's actions. While incidents involving force are usually fast-moving interactions, it is vital that the investigator obtain a detailed choreography regarding the force used with specific information about each force action and participant. There may be occasions when an interaction will need to be broken into several force actions so that the evolving nature of the force can be better depicted and evaluated. While it may be difficult to collect information about a fast-moving series of actions, conducting a highly chronological review of the testimony during the Direct Questioning portion of the interview (see the chapter on "Interviewing Civilians and Officers") will allow the investigator to more readily parse the use of force. The ability to plead these allegations correctly will depend upon the specificity of the questions and answers in these interviews.

Although the use of force requires an objective understanding of the mechanical actions taken by the officer, witnesses frequently provide testimony that uses subjective or euphemistic terms to describe the force. For example, a witness may say that he or she was "beaten," "dragged," "choked out," "yoked," or "thrown," but without a firm understanding of what actions were taken, the investigator will not be in a position to evaluate whether the use of force was permissible. Alternately, the civilian may use an unfamiliar term or colloquialism to describe force. The investigator should ALWAYS ask the witness to explain what is meant by the term. While the meaning of many terms may seem obvious, their actual meaning is very specific and frequently different from how the witness would define these actions. If an individual states, for example, that he or she was "dragged," the investigator should ask what parts of the body made contact with the ground; what happened as a result of the use of force; whether they were able to walk; if so, how; if not, why not; how far they were dragged; and whether any of the aforementioned circumstances changed throughout the course of the drag. Likewise, if a civilian simply states that he or she was "struck" by an officer, the investigator will have to obtain additional information, such as specific details about how the strike occurred, what part of the body was struck, what part of the officer's body (if the hand, open- or close-handed), what happened to the civilian when his/her body was struck, and whether the strike caused injury.

Similarly, while conducting the interview, the investigator should be actively listening for potential exaggerations that may be presented as factual information. An example of a potential exaggeration would be a civilian's claim that an "entire precinct" responded to the incident location, or that a victim was kicked in the head "100 times." Be sure to address these potential exaggerations with the civilian to ensure that accurate information is obtained. This must be handled delicately to ensure facts behind the exaggeration are drawn out rather than impeach the witness.

The investigator must also determine what the victim was doing immediately prior to the officer's use of force. Since an officer's use of force is often predicated by the victim's actions, a detailed description of these actions and conditions will allow the investigation to determine whether the

officer's use of force was permissible. The permissibility of the same force action will be analyzed differently based on the victim's actions or circumstances of the civilian, such as if the victim is handcuffed during the struggle, to reflect the difference between force used prior to the use of restraints versus force used after the victim was restrained in their ability to resist.

Questions that can be posed to gauge the victim's level of resistance include (but are not limited to) the following: What were you doing before the officer used force? Where were your hands? How were you positioned when the force was used? How long did it take for the officer to place you in handcuffs, and why did it take that amount of time? Did you / your body make physical contact with the officer(s)? What statements did you make? What statements were made by the subject officer(s)? How did you react to the use of force?

The investigator should also consider other factors that might have influenced the subject officer's decision to use force and question the civilian about these potential factors. Important factors to consider include the presence of a crowd, the behavior of a gathered crowd, the presence of a weapon, the location, the physical condition of the subject officer or victim, and the victim's mental condition (e.g. EDP, intoxication).

If a civilian indicates that a victim sustained injury as a result of force used by officers, then the investigator must obtain detailed information about the injury and how it was sustained. It is imperative that the investigator also collect information about any medical treatment that the victim may have received, the names of the medical facilities where treatment was sought, as well as the final diagnosis given by the medical personnel. If a victim indicates that he or she received medical treatment for an injury stemming from this incident, then the investigator will have to ask him or her to sign a Health Insurance Portability and Accountability Act (hereafter HIPAA) medical release form so that their medical records can be accessed. Please note that the victim should sign at least one release form per medical facility they visited, as the HIPAA releases are facility specific.

Equally important as asking the civilian how each injury was sustained is determining whether there were other conditions that could have caused the injury. This consideration can be very important when investigating cases where the victim was involved in an altercation prior to the arrival of the officers, if the victim fled from police custody, or if there are indications that the victim has a related pre-existing health condition or injury.

When questioning a civilian witness about situations regarding force, it is vital that the investigator collects objective information about the actions of the varying parties involved in the incident and not just the civilian's interpretation of these actions. This is not to say that conclusions are not important, but rather that conclusions made by civilians usually do not aid in drawing investigative conclusions. For example, if a civilian states only that the victim "did not resist arrest," the investigator can have no real understanding of what the victim actually did and therefore will not be able to evaluate whether or how much resistance the officer would have perceived. As with all investigations, the quality and the detailed nature of the evidence collected will directly impact the ability of the investigation to reach a definitive finding on the allegation.

Often civilians will act out force that was used. As the interview is recorded without video, it is imperative that the investigator narrate, describe, or otherwise vocally confirm what the complainant is acting out visually. Additionally, civilians often use inexact terms and/or confusing definitions of the tools used to administer force, and thus the investigator should have the civilian describe said

tool. For example, a civilian may say that they were struck with a “nightstick,” but when asked to describe the object, they describe a metal instrument which expands and contracts, which is a description that is consistent with an asp.

Witnesses may have difficulty providing testimony as a result of the force itself. Be sure to be sensitive to the needs of witnesses being interviewed, as per general interview guidelines.

OBTAINING OFFICER STATEMENTS REGARDING THE USE OF FORCE

All of the same principles that apply to civilians apply to officers as well, especially the guidelines regarding detailing each and every action. The primary differences between interviewing officers and civilians in regard to force used are that officers are being questioned regarding specific allegations of misconduct directed at them or other officers, that there is often more evidence in the CCRB’s possession by the time officers are interviewed, and that officers have general language that is applied throughout the NYPD to describe actions taken.

Beyond the actions of the officers and the civilian, the investigator should question the officer as to why s/he used force. Often, the answer to the question is more dispositive in an investigation than that something occurred.

Because investigators must confront officers with specific allegations against them, it is imperative that investigators obtain as specific details as possible from witnesses and victims regarding the allegations. Officers may have different ways of describing or perceiving events, and without specifics, the investigation cannot determine whether actions were justified. Confronting officers with the specific allegations requires that investigators establish with the officers their description and perception of the events that occurred and present any points where the officer’s testimony contradicts the allegations made by the witnesses and victims.

Additionally, various police documents, detailed elsewhere, will contain statements made by officers before, during, and after the incident. These documents should be referenced during the interview when an officer contradicts what these documents state, especially if these documents were prepared by the officer themselves.

Incidents involving force are often fast-paced and events can seem to witnesses to be conflated. Throughout the interview, the investigator should attempt to differentiate everyone’s actions and obtain as clear a chronology as possible.

In addition to the vague language that was described in the preceding section, officers also have a tendency to make abstract statements regarding the situation. It is not uncommon that officers state that an individual “flailed” their arms when officers attempted to handcuff them. While this may seem perfectly clear, officers often describe this action differently. This simple phrase can be deployed to cover a large amount of ground, anything from pulling his/her arms away to swinging at an officer. Additionally, officers may use language that carries a conclusion of their actions, such as “minimal amount of force” and “controlled maneuvers.” Phrases such as these do not provide specifics and are conclusions that it is the investigation’s job to make/recommend. The investigation is not analyzing whether or not the officer believed that his/her actions were justified, but whether these actions themselves fell within the law. If the work is not done in the interview to obtain these details, it is not possible for the investigator to weigh the officers’ statement against the

civilians' statements.

If injuries are alleged, the investigator should ask the officer if any injuries were observed and/or complained of, to describe these injuries, and if the officer knows how and when the individual obtained these injuries. Officers should be confronted with police documentation regarding injuries (e.g. Medical Treatment of Prisoner Report, Arrest Photo, Command Log) and evidence of injuries provided by the civilian (e.g. photographs, video).

The Patrol Guide (see below) specifies that officers should attempt to de-escalate a situation whenever possible. Thus information about any de-escalation attempts should be covered in the officer's interview as it will likely play a role in the analysis of the allegations. The investigator should ask questions related to the officer's training and experience in the application of force techniques. The Patrol Guide also stipulates that officers should not apply force when a lesser alternative could have been applied. This does not mean, however, that the Patrol Guide requires officers to cycle through all possible lesser uses of force prior to applying a certain form of force. Instead the Patrol Guide instructs that officers apply the amount of force appropriate to the situation and not automatically use the level of force that is permissible when other lesser alternatives are available and effective.

Just as with civilians, officers should be asked to sign a HIPAA release form if they received medical treatment. Often, officers or their representative will be reluctant to share this information. The investigator should explain to the officer and their representative that this will assist in establishing injuries the officer sustained. Officers and civilians both have the right to decline consent for accessing their medical records, and the investigator should not insist beyond providing the explanation of the value of obtaining medical records.

Additionally, investigators may need to obtain training materials for the subject officer, especially in instances where an officer justifies an action based on his/her training. Every officer has a unique training history that can be obtained through a formal request to the NYPD. Investigative Managers should consult with APU attorneys regarding the current practice of obtaining these documents.

TRANSCRIPTIONS OF INTERVIEWS INVOLVING FORCE

Clarity and accuracy are the marks of excellence to any transcription. As in the above, describing force and the circumstances surrounding force is difficult for all parties involved, and there are several ambiguities to our everyday speech. Regardless of how well-written a transcription is, if the ambiguities are not clarified in the interview, the transcription will expose as much. All of the details that the interviewee provided spontaneously or upon questioning should be noted in minute detail.

Often, interviewees will describe actions more than once throughout the course of the interview. The only time this needs to be noted is when one description differs from the second description. It is not necessarily important that the transcription contain a chronology of how information was revealed in the interview itself. Instead the investigator should incorporate the added details within the running narrative of the incident. However, if the interviewee directly contradicts a statement previously made during the course of the interview or in prior contacts, it is imperative that the investigator address these contradictions on the record, note these contradictions in the transcription, and note the reason for the contradictions as provided by the interviewee.

At times, officers and civilians simply cannot recall or provide the level of detail requested of them and this information should be made clear in the transcription. Investigators should note what the civilian or officer stated happened and then explain what the civilian or officer was unable to describe in exact detail. Lack of evidence is itself evidence, and the transcription should reflect what the officers and civilians are unable to describe. By doing this, the investigator clarifies for anyone reading the transcription, the civilian's or officer's understanding or memory of the actions taken by each party. If the civilian or officer provides a reason as to why they do not know something, this must be noted in the transcription as well.

If officers or civilians are shown video evidence, the time stamps of the video should be noted as well as the interviewee's spontaneous commentary and answers to questions in regard. If the officer or civilian identifies someone in the video, the investigator should take special care to note on the record and in the transcription, the time-stamp at which the identification occurred and a clear description of the identified individual. Additionally, if officers are presented with documentary evidence, these same details should be noted in the transcription along with their spontaneous commentary and responses to questions about the documentary evidence.

If the officer or civilian refuses to sign a HIPAA release form or unsealing order, the investigator should note as much on the coversheet of the interview or in the body of the interview itself. While a refusal to provide access to medical records is not dispositive in and of itself, that we do not have medical records needs to be noted somewhere and can be used in the analysis of the evidence along with other facts.

VIDEO EVIDENCE

Video evidence is a powerful tool to determine the facts of an incident. While video evidence seems to provide "independent" testimony, this "independence" can be compromised by factors such as who controlled the camera, what is in the frame of the camera and what is not, what happened prior to the footage being taken, and how clear the video is. Additionally, video footage alone cannot answer whether or not the actions depicted therein were justified: **THE VIDEO DOES NOT SPEAK FOR ITSELF**. Keep in mind that while this section focuses on video evidence, everything that is said about the audio aspects of video evidence applies to audio-only evidence.

Potential Issues

There are two matrices which investigators must bear in mind when accessing video: point of view and frames.

Point of View

One of the first questions that an investigator should ask themselves when approaching video evidence is "why was this camera rolling in the first place?" Surveillance video, TARU, DOT cameras, NYCHA cameras, and traffic cameras all provide a ready answer to this question: these are fixed cameras that are trained on a particular location to record the goings-on for the protection of life and property. These cameras are made to run all the time (if functioning) and typically do not have audio. Note that while most surveillance cameras follow the above description, some surveillance cameras are under the control of the person who owns them and may be turned off or on. Given that these cameras are constantly recording, are not movable, and are not under the discretion of any one person as to when they are recording or not, they provide more reliable evidence than discretionary video. This does not mean that the evidence is "better" or "more

accurate.” Often these videos are of poor image quality, do not capture entire events, and show events from odd angles. Their reliability is based on the fact that there is no question as to why they were running, what they were trained on, and for how long they recorded.

Viper cameras are placed inside of NYCHA buildings and are fixed to a wall/ceiling, but are controlled remotely by a member of the NYPD. These cameras do not typically record, but they can record if the operator of the camera spies something that they deem worth recording. Viper cameras do not typically have audio. Given that these cameras are fixed, they have a limited range of motion. However, Viper cameras are usually posted in clusters and can track movement from one camera to another.

Unlike the aforementioned types of video, cellphone (and personal portable devices like a handheld camera) video has to be turned on by someone. Rare is it that cellphone video starts at the very beginning of the incident, or that someone accidentally captures an entire interaction on their cellphone. Cellphone footage almost invariably starts after the interaction began. Because cellphones are discretionary, it is imperative that an investigator determine why the person filming the video decided to turn on the video and what they observed prior to turning this video on. The person filming controls where to train the camera, which has the added advantage of more exact focus (as opposed to stationary cameras that gather only what is in front of them), but have the added disadvantage of losing or missing contextual actions either intentionally or unintentionally on the part of the person recording.

Furthermore, individuals tend to act differently when they know that a camera is recording; the presence of a cellphone can alter peoples’ behavior. This effect is exacerbated when the individual filming has reason to portray or put on record words or actions that are contrary to what was captured. For instance, a civilian may turn on the camera and yell “Stop choking him,” even though what is depicted contradicts that officers are choking the individual. Finally, individuals filming can have “tunnel vision” focusing only on the screen and not on the events that are happening around them, thus making them a less reliable witness to the events that are not depicted on the video. Discretionary video footage provides less reliable evidence than non-discretionary video footage because of the choices made, either consciously or unconsciously, by the person filming the interaction. Again, this is not to say that cellphone evidence is “worse” or “less accurate.” Often cellphone videos have better image quality and capture more of the salient portions of events than stationary cameras, but cellphone videos have the added complication of being in the control of a particular person who may have an interest in depicting only certain events.

Police body worn cameras, like cellphone video, are turned on and off at the “discretion” of the police officer. Officers may choose not to turn on a recording, turn it on late or turn it off early, or they may forget to turn on their recording device until midway through the incident. Just like with cellphones, officers may change or alter their behavior when they are aware that they are recording the incident. This discretion is limited by the fact that there are departmental rules regarding the use of body cameras and by the fact that these cameras are not handheld and do not have a screen. Additionally, police body worn cameras are trained on what the officer is facing, and the officer does not have as much control as a handheld device. This can have the effect of important elements being left out as there is no display information for the officer to ensure that s/he is capturing good video. Investigators should always check if officers involved were equipped with a body-worn camera.

Frames

Videos always have three types of “frames”: spatial frames, temporal frames, and editorial frames. Frames place boundaries on the evidence that is able to be gleaned from the video. This is why, even with video evidence, it is important for investigators to interview all parties present: there are always events happening outside the frame which condition the actions of those within the frame.

The spatial frame of a video is the physical frame that bounds the image depicted and the focus/distance of the subject (persons or event being filmed). No matter the source of the video, it is important to keep in mind what is happening outside of the frame. In the case of video with audio, the audio picks up a wider range than the frame and can give indications of what is happening beyond the visual scope. Investigators should also pay attention to where the subject’s (person or persons being filmed) attention is focused. Multiple angles can help clarify this issue, but multiple angles are not always available. Special care should be taken to ask interviewees to describe what is happening off the frame at any given moment.

The same can be said of the distance/focus of video evidence. Something that occurs in the distance can appear blurry or indistinct, and this often hinders the investigation’s ability to say anything conclusive about the image. **By questioning civilians and officers regarding what was occurring in the image (not what they think it depicts, but what they recall as having happened at that moment) the investigation can begin to have a greater understanding of the image in question.**

A temporal frame refers to when the video recording began and when it ended. As shown above, the temporal frames can refer to the amount of discretion any given person has over when the video is recording and when the video is not.

An additional frame to take into account is the number of “pictures” or frames per second the camera captures. Some surveillance cameras only take a picture every few seconds, thus creating a series of photos which have no fluid movement. These types of video can be hard to trace because often force cases involve analyzing movements that occur so quickly that these cameras may not capture them. Just like with spatial frames, it is imperative that the investigator attempt to determine what happened prior to the recording, at what point in the incident did the recording occur, and what happened after the recording.

The editorial frame is when several videos are cobbled together, when entities only provide a portion of the recorded evidence, or when investigators ignore video footage because “nothing happens.” A lack of evidence is itself evidence, and whenever video footage emerges that does not show the central action, this does not mean that it lacks evidentiary value. Video without the subjects can show, for instance, where the officers and the civilians were not present, environmental hazards not apparent in other video or in statements, or witnesses and the witness’s reactions to events that are happening off screen. An edited video is much less reliable than raw video as the editor of the video may have an interest in removing non-flattering or contradictory information from the video. Investigators should always do their utmost to retrieve raw video footage when possible.

Summarization of Video Evidence

Video evidence should be summarized in a detailed  All summarized video evidence should begin with a header of the following information:

- If the video has been edited, whether or not the investigator knows, or if the person who provided it knows
- From where/whom the video came
- When the video was taken
- When and how the video was received
- Whether or not the video has audio
- Whether or not the video has a clock on the screen
- Length of video
- Whether the video is in color or in black and white
- A brief description as to whether or not the video captures FADO allegations

Summarization of video evidence should be written in the present tense. After the header, the video summarization should provide a brief “setting the scene” paragraph. For fixed cameras, this will involve a description of what the bounds of the frame are and a description of the physical environs with direction locators (e.g. to the left of the door, or on the north side of West 34th Street). For mobile devices, a description of the location of the video and orienting details as to the space should be provided:

The video opens with Mr. Korin on the north side of West 23rd Street between 6th Avenue and 5th Avenue in Manhattan filming toward 5th Avenue. There are several parked cars and a bus lane running the length of the street. Mr. Korin films on a mobile device from a Dunkin Donuts mid-block.

Following this, the investigator should include durational time stamps (e.g. between 00:35 and 01:04) of any captured FADO and the FADO contained therein. For non-verbal FADO allegations, this needs to be a statement of the allegation.

Example

Between 01:14 and 02:01, PO John Connor uses physical force against Kyle Reese.

OR

Between 03:00 and 03:55, PO1 frisks an individual.

For verbal allegations, the investigator should write the exact statement(s) made by the subject officer.

Example

Between 11:34 and 12:15, PO Rick Deckard said to Roy Batty, “Shut the fuck up. Shut the fuck up or you will be arrested. You’ll be arrested for being a pain in the ass.”

OR

Between 15:43 and 16:55, Paul Atreides asked PO Hasimir Fenring for his name and “badge number” eight times. PO Fenring responded, “You don’t need that. You aren’t getting anything.”

If the video does not depict any FADOs and at the time frame that the video covers no FADOs have been alleged, the investigator should note this here. If the video does not depict any FADOs and it is during a time frame where FADOs were alleged, the investigator needs to summarize this.

Example

PO Megan Murry is not depicted striking Mr. Camazotz at any point in this video, nor is any other officer. PO James Jenkins is not depicted using any profanity toward Mr. Wallace at any point in this video, nor is any other officer.

Video evidence summaries are not the place to make deductions or factual findings (e.g. PO James Jenkins did not speak discourteously during this incident). Deductions and factual findings are properly found in the closing report. Video evidence summaries provide a quick guide to the relevant information contained within the durational unfolding of video evidence.

PATROL GUIDE PROCEDURES

The level of force that a police officer can justifiably use is governed primarily by the New York State Penal Law and in the disciplinary context, is governed by the New York City Police Department Patrol Guide, which is consistent with, and at times more restrictive than, the Penal Law. For CCRB investigators, the Patrol Guide sets the standard by which the use of force is assessed.

On June 1, 2016, the New York City Police Department issued ten interim orders (Patrol Guide sections 221-01 to 221-10) that changed how the Department uses force, documents force, and determines whether officers used force appropriately. This new standard is more in line with the standard for evaluating Excessive Force claims by the United States Supreme Court, which requires that officers’ actions be “objectively reasonable in light of the facts and circumstances without regard to their underlying intent or motivation.” Graham v. Connor, 490 US 386, 397 (1989), see also Davila v. City of New York, 139 A.D.3d 890 (2nd Dept. 2016).

Patrol Guide 221-01: Force Guidelines

Patrol Guide section 221-01 provides force guidelines that officers are required to comply with when gaining compliance, control, or custody of an uncooperative subject. All officers are responsible and accountable for the proper use of force and the application of force must be consistent with existing law and with the New York City Police Department’s policies, even when Department policy is more restrictive than state or federal law.

Force may be used when it is reasonable to ensure the safety of officers or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. **Officers are held to the “Objective Reasonable Standard,” which states that the reasonableness of the use of force is based on the totality of the circumstances known by the officer at the time of the use of force.** When the reasonableness of force is examined by the Department, it is viewed from the perspective of an officer with similar training and experience,

placed into the same circumstances as the incident under investigation. For more information, investigators should refer to *Graham v. Connor*, 490 U.S. 386 (1989) which established this standard nationally.

Relevant factors that should be considered in determining whether there is a reasonable basis for the use of force, include the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm, whether the subject is actively resisting custody or attempting to evade arrest by flight, the number of subjects in comparison to the officer, size, age and condition of the subject in comparison to the officer, subject's violent history, presence of hostile crowd or agitators, and if the subject is under the influence of any stimulant or narcotics which would affect pain tolerance or the likelihood of violence.

De-escalation Techniques: An officer is required to use de-escalation techniques to safely gain compliance or eliminate the necessity to use force when appropriate and consistent with personal safety. The Patrol Guide defines de-escalation as taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources become available. If the use of de-escalation fails, officers should advise the offender that he/she will be charged with the additional offense of resisting arrest, devise a tactical plan to minimize the injury to the officer, subject and bystanders and advise the offender that physical force will be used, if appropriate. In order to properly assess the circumstances surrounding the use of force, investigators should determine which de-escalation techniques were used and how the success or failure of these techniques ultimately affected the situation.

Excessive Force: An officer's use of excessive force (which is defined as force deemed by the investigating supervisor as greater than what a reasonable officer, in the same situation, would use under the circumstances that existed and were known to the officer at the time the force was used) is not tolerated. Officers who become aware that excessive force has been used are required to intervene, request or ensure the individual receives timely medical treatment and report such misconduct to the Internal Affairs Bureau Command Center. Failing to do so constitutes serious misconduct. When differentiating between reasonable and excessive force, investigators should keep in mind whether the specific action further legitimated a police goal or function.

Firearm Prohibitions: In certain circumstances, it may be necessary for an officer to display or draw their firearm based on their articulable belief that the potential for serious physical injury is present. Under New York State Law, officers are permitted to discharge their firearms to prevent or terminate the unlawful use of force that may cause death or serious physical injury. Nevertheless, officers must take into account the following prohibitions that have been imposed by the Department.

Firearm-related prohibited conduct:

1. Discharging a firearm when doing so will unnecessarily endanger innocent persons.
2. Discharging firearms in defense of property.
3. Discharging firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to the officer or another person present.
4. Firing warning shots.

5. Discharging firearm to summon assistance, except in emergency situations when someone's personal safety is endangered and no other reasonable means to obtain assistance is available.
6. Discharging their firearm at or from a moving vehicle unless deadly physical force is being used against officers or another person present by means other than a moving vehicle.
7. Discharging their firearm at a dog or other animal except to protect officers or another person present from imminent physical injury and there is no opportunity to retreat or eliminate the threat
8. Cocking a firearm. Firearms must be fired double action at all times.

General Force Prohibitions: Non-firearm-related prohibited conduct :

1. Using a chokehold, which includes but is not limited to any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air;
2. Using any level of force to punish, retaliate or coerce a subject to make statements;
3. Using any level of force on handcuffed or otherwise restrained subjects unless to prevent injury, escape or to overcome active physical resistance or assault;
4. Connecting or tying rear-cuffed hands to cuffed or restrained ankles or legs (aka "hogtie");
5. Transporting a subject facedown;
6. Using force to prevent a subject from swallowing alleged controlled substance or other substance, once a subject has placed the substance in their mouth, or forcibly attempt to remove substance from subject's mouth or other body cavity.

Deadly Physical Force: An officer's use of deadly physical force should be a last resort and can only be used against a person to protect officers and/or the public from imminent serious physical injury or death. Deadly physical force is defined as physical force, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. In most cases, deadly physical force involves the use of a firearm, but it can also include other instances of force, such as the use of a baton. For additional information regarding the use of deadly physical force, the investigator should review the "Special Topics" section of this chapter. It is important to note, however, that in extraordinary circumstances (e.g. using deadly physical force to terminate a "mass casualty terrorist event"), members of service may be exonerated for their conduct. Actions which are clearly prohibited above *may* be exonerable in extraordinary circumstances. Any member of service who is subject to an investigation, disciplinary action, civil action, or civilian complaint related to a force allegation may request that the NYPD's Use of Force Board review the facts and circumstances and make a final determination as to the reasonableness of the officer's actions.

Upon finding that an officer used force, the investigator will have to determine through the investigation whether the officer acted reasonably based on the totality of the circumstances, used de-escalation techniques and/or participated in prohibited actions that constitute excessive force.

Patrol Guide 221-02: Use of Force

Patrol Guide section 221-02 provides further guidelines and considerations for officers specific to the use of force and requires officers to:

- Assess the situation continually and adjust the use of force as necessary.

- Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply.
- Avoid compressing a subject's chest during and after handcuffing and position the subject to promote free breathing.
- Use force on animals only to the extent that such force is necessary to prevent harm or injury to such animal, other animals, or persons.
- Observe closely for signs of injury/illness/difficulty breathing, and inquire if a subject requires medical attention after any use of force.
- Document the use of force in their memo books.

Patrol Guide section 221-02 also makes the differentiation between active resisting, active aggression, passive resistance and resisting arrest. These are listed here only so that the investigator can better understand police jargon and should be avoided by investigators as they can be misleading. These terms are used vaguely and generally by officers when describing their interactions with the civilians, which is why it is so important for investigators to get detailed accounts from both civilians and officers concerning all movements and behaviors to disambiguate these vague terms (see Appendix 1).

Patrol Guide 221-03: Reporting an Investigation of Force Incident or Injury to Person

Patrol Guide section 221-03 describes the three levels of force and the three types of injury or illness that are used to make this determination. Officers are required to report and investigate uses of force, allegations of force and/or injuries that resulted from police action. The supervisor on the scene is responsible for making a prompt assessment of the circumstances and to categorize the level of force and/or injury.

Levels of Force

1. Level 1-Physical Force/Less Lethal Device: defined by the use of hand strikes, foot strikes, forcible take-downs, the wrestling of the subject to the ground, the discharge of Oleoresin Capsicum (O.C.) pepper spray, the deployment of Conducted Electrical Weapon (CEW) in probe mode (aka cartridge mode) or the use of a mesh restraining blanket to secure a subject.
2. Level 2-Use of Impact Weapon/Canine/Less Lethal Device: the intentional striking of a person with any object (baton, other equipment etc.), a police canine bite, or the use of CEW in "drive stun mode."
3. Level 3-Use of Deadly Physical Force: use of physical force that is readily capable of causing death or serious physical injury and includes the discharge of a firearm.

Type of Injury or Illness

1. Physical Injury: Impairment of physical condition and/or substantial protracted pain which include minor swelling, contusions, lacerations, and/or abrasions and complaint of substantial protracted pain.
2. Substantial Physical Injury or Illness: Any substantial impairment of physical condition such as significant contusions, laceration(s) requiring suture(s) and/or any injury or condition that resulted from police contact or action requiring treatment at a hospital emergency room.

3. Serious Physical Injury or Illness: Physical injury or illness which creates a substantial risk of death or which causes death or serious protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ or limb such as broken/fractured bone(s), injury requiring hospital admission, gunshot wound, heart attack, stroke, or other life-threatening/serious illness/injury.

Threat Resistance or Injury Incident Worksheet (T.R.I.): This form is used to record all instances when a civilian subject sustains a physical injury or dies as a result of police action or while in custody; a member of the service sustains a physical injury or dies as a result of apprehending, or attempting to apprehend a subject or control individuals; a prisoner attempts or commits suicide; any alleged or suspected level of force used by an officer; regardless of whether an injury was sustained, force was used against an officer; or an officer discharged OC pepper spray, a Conducted Electrical Weapon or firearm.

For any Level 1 use of force or physical injury, the officer's immediate supervisor will respond and a TRI worksheet must be prepared. For any Level 2 use of force or substantial injury, the commanding officer/executive officer/duty captain must respond and investigate, unless superseded by the authority of the IAB or Force Investigation Division (FID). A TRI worksheet and an Investigating Supervisor Assessment Report (ISAR) must be prepared. For any Level 3 use of force or serious physical injury, IAB investigators must respond and conduct an investigation, unless superseded by the investigative authority of the FID. Once again, a TRI worksheet and an ISAR must be prepared. For all firearm discharges and incidents in which the subject of police action is seriously injured and likely to die or dies immediately prior to or while in police custody, the FID must respond and conduct an investigation. A TRI Worksheet and typed UF-49 must be prepared on letterhead.

Once the IAB investigator has determined that force was alleged, force was used or injury occurred, they will have to determine whether the level of force/injury was categorized correctly and whether officers correctly investigated, assessed and reported the level of force/injury.

To research the command and supervisor responsibilities, notification and paperwork requirements, the investigator should examine Patrol Guide section 221-03. In addition, they should examine Patrol Guide section 221-05 (person dies or sustains a serious injury and is likely to die in police custody or in connection with police action), and Patrol Guide section 221-06 (member of the service subjected to force while performing lawful duty).

Patrol Guide 221-07: Use of Oleoresin Capsicum (OC) Pepper Spray Devices

Patrol Guide section 221-07 provides guidelines regarding the use of O.C. pepper spray and how its use should be documented.

O.C. pepper spray may only be used in situations when an officer reasonably believes it is necessary to gain or maintain control of persons who are actively resisting or exhibiting active aggression, to prevent individuals from physically harming themselves, officers or another person, to establish physical control of a fleeing subject or emotionally disturbed person or to control a dangerous animal.

In an effort to gain voluntary compliance, officers should advise the offender that O.C. pepper spray

will be used beforehand if possible. O.C. pepper spray should be used at a minimum distance of three feet away and for two one-second bursts. Officers should avoid use of the O.C. pepper spray on the frail, young children, pregnant women, those with known respiratory condition and those who are passively resisting. O.C. pepper spray should not be used indiscriminately over a large area as crowd control, with the exception of officers who are specifically trained in this type of crowd control and then only at the direction of a supervisor. O.C. Spray should not be used in a small contained area. Once O.C. pepper spray has been used and the situation is under control, officers should request Emergency Medical Services (EMS), expose the subject to fresh air, position the subject on their side to promote free breathing and provide water if available.

Once it has determined that O.C. pepper spray was used, the investigator should consider why the officer believed this particular use of force was effective given the circumstances and if the officers took the appropriate steps to ensure that the individual received medical treatment following its use.

Patrol Guide 221-08: Use of Conducted Electrical Weapons (CEW)

Patrol Guide section 221-08 describes the circumstances under which it is appropriate to use a CEW and the procedures that officers must comply with when using the device. Only authorized personnel are permitted to use CEWs, which should only be used against those actively resisting or exhibiting active aggression, or to prevent individuals from injuring themselves or other people actually present. They should generally not be used on children, the elderly, obviously pregnant women, those who are frail, prisoners that are rear-cuffed, and subjects that are operating or riding on a moving device or that may fall from an elevated surface. In addition, an individual fleeing should not be the sole justification for using a CEW against a subject.

Prior to using a CEW, officers should issue a laser warning or warning arc in conjunction with a verbal warning if possible. A laser warning involves pointing and placing the laser dot from an activated CEW on a subject. A warning arc includes activating and discharging a CEW with the cartridge removed that displays a visible and audible arcing of electricity to the intended subject. The purpose of both warnings is to achieve voluntary compliance from the subject.

There are two distinct modes of CEW use that differ in terms of how the device is deployed. The primary mode, or Probe Mode, propels two darts on conductive wires from a cartridge attached to the front of the CEW. The secondary mode, or Drive Stun, involves bringing the expended cartridge attached to the front of the CEW, or the electrodes on the front of the CEW, and making immediate, direct or close proximity contact with a subject's body or clothing. Drive stun mode should not be the primary method of use unless exceptional circumstances exist.

For frontal discharges, CEWs should be aimed at the lower center mass and below the heart. When discharged at an individual's back, the CEW should be aimed below the neck area. Officers should avoid discharging at an individual's head, neck, chest or groin and should use the CEW for one standard cycle (five seconds), while constantly assessing the situation to determine if subsequent cycles are necessary. Officers are not permitted to intentionally discharge two CEWs simultaneously or use CEWs when combustible gases or flammable liquids are present. Once a CEW has been discharged, officers are required to seek EMS, notify supervision, safeguard the CEW cartridge and document the discharge using the Electronic Taser Usage Log/X-26 Data Sheet, Memo Books, and the Command Log.

Upon finding that a CEW was used, the investigator will not only have to determine whether using

the device was justified, based on the totality of the circumstances, but also if the specific way that the device was used was appropriate.

ANALYSIS

In all cases, the analysis of an allegation involves determining the facts, determining the rule that applies to the facts and applying the appropriate rule to the facts. The above sections explored the gathering of facts, which is by far the most labor-intensive portion of any investigation. For the investigator to determine the relevant facts of any given situation, the investigator must have an understanding of the rules that apply. Therefore, the investigator must review and familiarize themselves with the appropriate Patrol Guide Sections, case law and other rules that apply, prior to conducting civilian and officer interviews, so that the relevant facts can be gathered.

As the investigator obtains more information about the case, the issues surrounding the use of force may become clearer. For example, through interviews and documentary evidence, it may become apparent that the civilian was actively resisting by using their hands to push away the officers while being apprehended. Once the particular issues have been narrowed down, the investigator is responsible for conducting further and more specific research to ensure that all of the appropriate facts have been collected to resolve this issue.

Throughout the fact-gathering process, the investigator should collect objective evidence to assist in assessing injury and corroborating or refuting civilian or officer testimony. Examples of evidence directly relevant to force allegations include medical records, police documentation, photos of injuries, and video footage.

Although medical records can be useful tools in analyzing force, they cannot prove misconduct. In a similar vein, even if it is determined that an injury occurred as a result of police force, the allegation cannot be automatically substantiated because the totality of the circumstances must be considered. For more information, the investigator should reference the Medical Records chapter.

Officers are required to record their use of force through certain documentation, including but not limited to, memo books, the Command Log, arrest report, Criminal Complaint Report (UF-61), arrest photo, Medical Treatment of Prisoner Report, TRI and ISAR, prisoner pedigree card, prisoner movement slip and the criminal court complaint and supporting documents. Police documentation often provides statements from the officers involved and can shed light on their perspective and justifications, even before officer interviews have been conducted. For further information, the investigator should reference the Police Documents chapter.

Once all of the relevant facts have been gathered, the investigator must first determine whether the alleged force occurred, and then determine whether it was proper. Upon identifying the force allegations, the investigator should research the factors and conditions that officers must consider when justifying that particular use of force. The analysis will be conducted by applying the facts of the case to the appropriate Patrol Guide Procedures that are detailed in this chapter. The Patrol Guide offers broad principles and considerations regarding the use of force, in addition to more specific rules that officers must follow when using and documenting certain types of force. For this reason, it is crucial that the investigator establishes all of the factors that may have influenced the officer's decisions and actions during the fact-gathering stage.

When analyzing the circumstances surrounding the use of force, the investigator should reference Patrol Guide Procedure 221-01 and the relevant factors that should be considered in determining whether there was a reasonable basis for the use of force. It is imperative to acknowledge the full context, rather than isolate a specific action, and consider all the conditions that may have influenced how or why an officer behaved in a particular incident.

When determining whether the application of force was reasonable under the circumstances, the investigator should focus on whether the use of force was necessary and if it further legitimated a police objective. For example, an officer may push an individual who they intend to arrest, but the individual was calm and compliant without any signs of resistance. Although the force used in this example appears to be minimal, when considering the circumstances under which the force was used, the push was not reasonable. Likewise, an officer may shoot a suspect who is pointing a gun at them after having committed a series of armed robberies. While this force appears to be much more extreme, when considering the situation in its entirety, the use of force was reasonable.

Once it is determined that the action was reasonable considering the circumstances, it is important to ensure that the force had a legitimate law enforcement purpose. For example, a suspect, who was resisting by throwing numerous officers off of them, resulting in injuries to several officers, was eventually handcuffed on the ground and an officer subsequently kicked the suspect in the head. The particular action of kicking the individual in the head had no legitimate law enforcement purpose in this context. The application of force should be narrowly tailored to obtain the objective of the law enforcement purpose and should only be applied to the degree that is reasonable to overcome the civilians' level of resistance.

It is important to keep in mind when analyzing force that these situations are fast-paced and fluid. An incident that takes seconds to unfold can be analyzed after the fact with a degree of scrutiny that was not possible at the time of the incident. In addition, certain movements and acts, and the judgment of how to react and overcome these movements and acts, can be perceived differently in a high-stress environment. With this in mind, it is also important to remember that officers receive training and resources to prepare themselves for these intense situations, providing officers the capacity to respond to resistance with different kinds of force. The investigator must find the balance between being cognizant of the quick judgments that officers are forced to make and holding the officers to the standards with which the NYPD trains them.

After determining what happened, the level of force that was employed and the required justification for the use of force, the investigator must decide whether the action was justified and provide a subsequent recommendation. The investigator, for example, will have to determine whether Officer X's use of force was reasonable given the prevailing circumstances (see Overview of the Investigative Process for a description of the possible dispositions).

SPECIAL TOPICS

As seen above, certain methods or forms of force have different degrees of restrictions or guidelines. In most instances, deadly physical force, death in custody, chokeholds and restricted breathing, and struck-by-vehicle allegations will be concurrently investigated by both IAB and the CCRB. Remember that the CCRB is an independent city agency, and while it will take into account the evidence gathered by IAB, ultimately the Board will decide its findings on the basis of the

evidence and not IAB's recommendation. Most of the allegations discussed here fall under the "criminal exception" rule that allows the CCRB to file charges after the expiration of the Statute of Limitations because the officer's conduct could be criminally charged. This does not mean that investigators should not try to close these cases with haste, but that in the event of DA Holds and/or exigent circumstances, the CCRB reserves the right to pursue the case.

Concurrent IAB Investigation

Anytime an officer reports an injured prisoner to IAB, the case is high profile (i.e. sensitive), or the individual suffers serious physical injury (e.g. stitches, broken bones, coma, or death), the assigned investigator should contact the IAB-CCRB Liaison's Unit and determine if IAB is also investigating the complaint. The IAB-CCRB Liaison's Unit will inform the investigator to which "group" the case is assigned. [REDACTED]

[REDACTED] The investigator should then contact the group to which the complaint is assigned and determine who the investigating officer is. These calls are not recorded.

The investigator is not to discuss outcomes of allegations until the Board has decided the case. The investigator should periodically follow-up with IAB to track the progress of IAB's case and can ask for and share details of the IAB and CCRB cases. No documents should be given directly from the investigator to the IAB officer, these requests must go through IAB. If IAB interviews the officers prior to the CCRB, the investigator will have to order the GO15s, or the subject and witness officers' IAB interview audios. Officers have the right to listen to their previously recorded statements prior to providing a statement regarding a case, and it is the investigator's responsibility to obtain this audio for the officer to review. If the IAB case is still open, the investigator will not be allowed to listen or handle these audio files. The investigator should also request the entire IAB case file, even though IAB may decline to release the file until their investigation is complete.

The NYPD's Use of Force Board (see Patrol Guide Procedure 221-01) may conduct its own investigation into the case, in which case the investigator should treat that investigation like an IAB investigation and obtain the necessary documents.

Deadly Physical Force

Any action taken by officers that has a high likelihood of causing death or serious physical injury falls under this category. Typically, cases that involve deadly physical force are gun fired allegations. However, allegations of striking an individual in the head with a blunt instrument (e.g. asp, baton, gun, radio) also fall under this category. Special care must be taken to determine the entirety of circumstances involved in the officers' decision to deploy deadly physical force. These cases often will have additional evidence, ballistics reports, and an early investigation conducted by Borough Investigations or IAB. The advantage of these investigations is that Borough Investigation and IAB are typically on scene early on and are able to gather time-sensitive evidence.

As noted above, officers in extraordinary circumstances (e.g. a civilian's assassination attempt) may be exonerated for actions which are prohibited in the Patrol Guide. These circumstances are rare, but investigators should discuss these cases with their supervisor before proceeding.

In shooting cases, every bullet is tracked, and thus there is not typically a dispute as to whether or not the gun was fired, but rather, *why* the officer fired the gun. The investigator should center their analysis on the life-threatening conditions, or lack thereof, created by the victim. This same standard should be used when analyzing strikes to the head with blunt instruments. To research

specific officer duties and the proper notifications that should be made in the event that a firearm is discharged in further detail, the investigator should examine Patrol Guide section 221-04.

To research additional information regarding deadly physical force, investigators should review Patrol Guide section 221-01 subsection deadly physical force.

Death in Custody

Death in custody refers to any case whereby the victim dies as a result of police action or dies while in the care and/or custody of the NYPD. Typically, without a witness or a victim, the CCRB cannot pursue an investigation. Given the nature of death in custody cases, where the victim is unable to provide a statement and may be the sole witness of the incident, the CCRB can open an investigation on the basis of a cooperating family member, even if they were not present for the incident. Death in custody cases always involve a concurrent NYPD investigation. Given the myriad ways for someone to die in custody, from the application of force to pre-existing health issues, the allegations in a death in custody case may not involve force allegations. However, given that these cases involve body-based effects, many of the same tools are used in the analysis. For cases in which it is alleged that the civilian died in police custody due to a lack of medical treatment for a pre-existing condition, investigators should refer to Patrol Guide Procedure 210-04.

In cases where a civilian dies due to the application of force, it is imperative that investigators obtain autopsy evidence from the Office of the Chief Medical Examiner (OCME). These documents can be obtained by sending a letter request on letterhead to the OCME, the address of which can be found in the [REDACTED]. These reports will describe the process that the medical examiner took, the evidence beyond the individual's body that was used to come to their findings, and a description of the cause and manner of death.

Just like in deadly physical force cases, the investigator's analysis should take into account the entirety of the circumstances surrounding the events that led to the victim's death.

To research additional information regarding officers' responsibility to provide medical and/or psychiatric treatment, the investigator should review Patrol Guide section 210-04.

To research additional officer responsibilities and notification and paperwork requirements for pre-custody and in-custody death or serious injuries, the investigator should examine Patrol Guide Procedure 221-05. For additional information, the investigator should review Patrol Guide Procedure 212-04 (Crime Scene) and 221-03 (Reporting and Investigation of Force Incident or Injury to Persons during Police Action).

Chokeholds and Restricted Breathing

Given that the NYPD prohibits any use of a chokehold or limiting an individual's ability to breathe in any circumstance, the analysis of these allegations will bear solely upon the facts of the case. That is to say, the analysis will center on whether or not the officer did the alleged action and not upon whether it was justified given the individual's behavior or actions. Medical records are of particular import in establishing these facts.

Additionally, the investigator should take care to determine whether the chokehold in fact obstructed, in any way, the victim's breathing. If the victim's breathing was not obstructed, but the officer placed pressure on the victim's throat, only a chokehold should be pleaded. Likewise, if the

officer restricted the victim's breathing without making contact with the victim's neck, only a restricted breathing allegation should be pleaded.

For more information regarding chokeholds and restricted breathing, consult Patrol Guide Procedure 221-01, subsection General Force Prohibitions. As noted above, in extraordinary circumstances (e.g. stopping an imminent arson at a daycare), the Patrol Guide permits for actions that would generally be prohibited.

Struck by Vehicle

Allegations of a victim being struck by a vehicle require that the investigator analyze whether a collision in fact occurred, and, if so, whether the collision was intentional (as when it is alleged that officers "clip" a dirt bike to cease its movement) or accidental (see the chapter on "Drafting Allegations").

THRESHOLDS

Some alleged actions are on the border of force and discourtesy. Hitting a cigarette out of someone's mouth or poking someone in the cheek or face present particular difficulties. There is an ambiguity at the lower threshold of physically interacting with someone. Generally speaking, investigators should take into account the meaning and purpose of the action to determine the allegation under which it falls. Hitting someone in the face which happens to remove a cigarette from someone's mouth will need to be analyzed differently than hitting a cigarette out of someone's mouth whereby the fingers brush the person's face. Often the difference between force and discourteous actions is not quantity of force, but the type of the action.

Appendix
Patrol Guide 221 Tables

(deleted)